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FCC AUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REAUTHORIZING THE FEDERAL COMMUNICATIONS COMMISSION FOR FISCAL YEARS 1988 AND 1989

APRIL 21, 1987

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FCC AUTHORIZATION

TUESDAY, APRIL 21, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:35 p.m, in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye (Chairman of the Subcommittee) presiding.

Staff members assigned to this hearing: Tom Cohen, staff counsel and Gina Keeney, minority professional staff member.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. The hearing will please come to order.

Today's hearing of the Communications Subcommittee will address reauthorizing the Federal Communications Commission for Fiscal Years 1988 and 1989.

The President has asked that we fund the Commission of a level of $107,250,000 for fiscal year 1988; this is $5 million over the previous year's amount.

This additional amount is to cover increases in compensation and benefits for FCC employees, to fund new positions to process and collect fees, and to provide for the relocation of a monitoring station.

Since we last passed reauthorization legislation, the Commission has completed many important proceedings. I am sure the members of the Subcommittee will want to discuss such matters as the new access charge plan with its increased subscribed line charge, the must-carry order, and the decision in the third computer inquiry.

The Commission also has a host of vital proceedings pending. Two of particular interest are the inquiries into preferences for minorities and women and distress sales, and the proposed rule to deregulate common carriers.

As most of us are aware, today's hearing marks the first appearance of the new Chairman of the FCC, Hon.Dennis Patrick, before this Subcommittee.

And on behalf of the subcommittee, I welcome you, Mr. Chairman.

I have a statement that Senator Hollings would like to have inserted in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

I want to thank the Chairman of the Subcommittee for holding this hearing on reauthorizing the Federal Communications Commission. For too long, the Congress has permitted the FCC to go along as if it were hardly accountable to anyone. This is most disturbing since the FCC is deeply involved in setting communications policy on a day-to-day basis. It is important that the Congress regularly bring the Commission up here to discuss what has happened and to ensure that the Commission's actions are within the framework that the Congress has established. So, I am glad that you have called this hearing and encourage you to hold them regularly.

I also want to congratulate the new Chairman of the FCC, Dennis Patrick. We on the Commerce Committee look forward to working with you in establishing communications policy.

Senator INOUYE. We look forward to working with you to achieve communications policy that best serves the interests of the American public.

Welcome sir.

STATEMENT OF HON. DENNIS PATRICK, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY PETER PITSCH, CHIEF, OFFICE OF PLANS AND POLICY; JIM McKINNEY, CHIEF, MASS MEDIA BUREAU; BERT HALPRIN, CHIEF, COMMON CARRIER BUREAU; ED MINKEL, MANAGING DIRECTOR; AND DIANE KILLORY, GENERAL COUNSEL

Mr. PATRICK. Mr. Chairman, members of the Subcommittee, it is indeed a pleasure to appear before you this afternoon to to discuss the activities of the Federal Communications Commission and the issues of vital importance that confront us.

First, if I might, Mr. Chairman, I'd like to introduce our bureau chiefs who are here at the front table with me.

On my left, we have Diane Killory, our general counsel: Ed Minkel, the managing director; Bert Halprin, the chief of our common carrier bureau; Jim McKinney, chief of our mass media bureau; and Peter Pitsch, chief of the office of plans and policy.

Senator INOUYE. Welcome.

Mr. PATRICK. I would like also to take a moment, if I might, to express my thanks and admiration for Mark Fowler. Mark led the Commission, as you know, Mr. Chairman, during its six most turbulent years.

Divestiture and a myriad of technological changes required many tough calls. While certainly not everyone agrees with every one of those decisions, his vision, his conviction, his integrity,and the scope of his accomplishments must be respected.

His will be a tough act for me to follow.

In describing my objectives as Chairman, I want to make clear that my overriding goal, in compliance with the Commission's statutory mandate, is to maximize the benefits the public derives from our nation's communications facilities and services.

I believe that consumer welfare and the public interest are what should count in guiding our deliberations. And while I believe that markets and competition will surely serve consumers better than regulation, it is important to keep in mind that competition and deregulation are only means to that ultimate end, the promotion of consumer welfare.

To promote the public interest, it is important for the Commission to provide a legal framework of rules and regulations which will permit markets for services to function effectively and to bring benefits to consumers.

Where regulations are unnecessary or inimical to the public interest, I think we should get rid of them. But where regulations are needed, and no market can function without at least some basic rules of the game, it is our job to supply them.

And obviously in an age of budgetary stringency, it is essential that the Commission carry out its responsibilities in the most efficient and expeditious manner possible.

I share the view of my predecessor that wherever possible, it makes sense to promote a competitive market for the development and use of communications facilities and services.

The comparative efficacy of the competitive enterprise system as an engine of economic growth and prosperity is beyond dispute, and what is true in general is particularly true in the industries with which the Commission is concerned.

The expansion of competition in broadcasting, telephony, private radio—indeed, in virtually every area we regulate—is lowering prices, improving service, and creating new business and employment opportunity.

Competitiveness is the new buzzword in Washington. Well, if concerns about competitiveness are genuine, and they should be, in my view, because our trading partners certainly take them seriously, then we must be concerned with the telecommunications infrastructure of this nation.

In the information age economy, effective communications technology is becoming the key productive input, second only to human capital.

I believe that one of the most important ways of ensuring that American firms maintain or regain their edge in world markets is to make sure that our communications infrastructure is as efficient as it can be.

At every turn, we find that competition is prospering. The intense rivalry among competitors and the fragmented market shares in the equipment and information services market are well documented.

Even in the long distance market, AT&T's share of premium minutes has been steadily falling, and its share of capacity is now below 50 percent.

Hundreds of firms have entered different segments of the market in different regions of the country, and a huge program of capacity expansion is underway.

One 1985 survey showed that if all the announced building plans were completed, there would be a fourfold increase in capacity by the end of 1988.

Nonetheless, while the number and capacity of the entering firms are auspicious, the cost of competing successfully in the long distance market is huge; the margins are small; and the competitive balance is delicate.

Thus, we must be ever vigilant to ensure that our regulatory policies do not impede or impair the evolution of effective competition.

We should always be willing to consider regulatory changes that might permit competitive forces to operate more freely to bring benefits to consumers; allow regulation to achieve its goals more effectively; and be more conducive to the natural evolution of competition.

Mr. Chairman, at this point in my written testimony, I discuss specific issues, such as the increased subscribed line charge, the current MFJ restrictions, our syndicated exclusivity rulemaking, and the prospects for high definition TV, as well as specific biannual authorization requests.

But in the interests of time, let me defer my discussion of those issues to the question period.

And therefore, Mr. Chairman, I would conclude by saying that because this is my first hearing since becoming Chairman yesterday morning, I am happy to have this early opportunity to share with you some of my views, and of course, to learn of your interest and your concerns.

The issues confronting the Commission are often complex; they are sometimes controversial; but they are always of great consequence to the nation.

I therefore look forward to a close working relationship with this committee, with you, Mr. Chairman, and to a constructive dialogue from which we both may learn, and most importantly, from which the American public may benefit.

Thank you, that includes my opening remarks, Mr. Chairman.

[The statement follows:]

STATEMENT OF DENNIS R. PATRICK, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee. It is a pleasure to appear before you this morning to discuss the activities of the Federal Communications Commission and the issues of vital importance that confront us. As you requested in your letter of invitation, I will also address several important pending policy matters, including the latest subscriber line charge decision.

First, I would like to take a moment to express my thanks to and admiration for Mark Fowler. Mark led the FCC during its six most turbulent years. Divestiture and a myriad of technological changes required many tough calls. While certainly not everyone agrees with every one of those decisions, his vision, conviction, integrity and the scope of his accomplishments must be respected. His will be a tough act to follow.

In describing my objectives as Chairman, I want to make clear that my overriding goal, in compliance with the Commission's statutory mandate, is to maximize the benefits the public derives from our Nation's communications facilities and services. I believe that consumer welfare and the public interest are what should count in guiding our deliberations. And while I believe that markets and competition will usually serve consumers better than regulation, it is important to keep in mind that competition and deregulation are only means to our ultimate end: The promotion of consumer welfare.

To promote the public interest, it is important for the FCC to provide a legal framework of rules and regulations which will permit markets for communications services to function effectively to bring benefits to consumers. Where regulations are unnecessary or inimical to the public interest I think we should get rid of them, but where regulations are needed—and no market can function without at least some basic rules of the game—it is our job to supply them. And obviously in an age of budgetary stringency, it is essential that the Commission carry out its responsibilities in the most efficient, expeditious manner possible.

I share the view of my predecessor that, wherever possible, it makes sense to promote a competitive marketplace for the development and use of communications facilities and services. The comparative efficacy of the competitive enterprise system as an engine of economic growth and prosperity is beyond dispute, and what is true in general is particularly true in the industries with which the FCC is concerned. The expansion of competition in broadcasting, telephony, private radio communication, indeed, in virtually every area we regulate, is lowering prices, improving service, and creating new business and employment opportunities.

In meeting with my counterparts at the state level, I have been struck with the extent to which they perceive the need for their states to provide competitive state-of-the-art telecommunications services. Telecommunications has become a key component of virtually every state's economic infrastructure. Given competition among the states, any state that fails to keep technological pace will inevitably find itself losing individual and corporate citizens. Hence the concern of responsible state officials throughout the land to stay competitive and provide an attractive environment for business growth and opportunity.

The same thing is true at the national level. In his most recent report to Parliament, the Director General of Britain's Office of Telecommunications stated that: "Telecommunications is increasingly becoming a vital service to business and for some businesses, it is a significant component of total costs. Telecommunications is particularly important in the key financial services sector."

He argued that: "The costs of businesses located in the UK should be kept as low as possible, consistent with fair pricing, so that such businesses have every opportunity to compete effectively both in the UK and overseas."

Then added: "Such a pricing policy is ultimately beneficial to domestic customers."

I think Mr. Carsberg is right on the mark, which is why I have quoted him at some length.

"Competitiveness" is the new buzz word in Washington. If concerns about "competitiveness" are genuine—and they should be, because our trading partners take them seriously—then we must be concerned about the telecommunications infrastructure of this nation. In the Information Age economy, effective communications technology is becoming the key productive input, second only to human capital. It plays a role previously performed by, for example, energy and transportation inputs. I believe that one of the most important ways of insuring that American firms maintain or regain their edge in world markets is to make our communications infrastructure as efficient as it can be.

COMMON CARRIER ISSUES

Now, Mr. Chairman, I would like to turn to some specific issues that I know you and the Members are especially interested in discussing. First, I would like to address three important common carrier matters: The public policy rationale for increased subscriber line charges, competition in the long-distance business, and, finally, the adequacy of competitive safeguards if the Court or Congress relax the current MFJ restrictions on the scope of permissible activities for the former Bell Operating Companies.

With respect to subscriber line charges, I want to express my support for the compromise solution proposed by the Joint Board and approved last week by the Commission. That package of proposals is a highly integrated, comprehensive set of policy initiatives that together will advance the telecommunications network to the benefit of all American consumers. The increase in subscriber line charges to $3.50 is necessary to continue the downward movement of long distance rates toward their actual cost and to stimulate network usage in order to enable the industry to finance Link-up America. The increase in subscriber line charges is also necessary to permit modifications in pooling arrangements.

I think our goal in setting telephone rates should be to maximize the benefits the public derives from the public switched network. To do that we need to maintain universal service, but we also need to price actual use of the network as low as possible, consistent with maintenance of universal service and with effective recovery of costs. Otherwise, we will discourage people from making calls, which is, of course, the main reason for having a telephone network to begin with.

Having gone to tremendous expense to create a telecommunications system without peer in the world, it surely makes little sense to price usage of it in a way that limits the benefits consumers derive from its existence. We need to give consumers the right kind of price signals to guide their decisions about use of the network. That means providing incentives for consumers to make additional long-distance calls as long as they are prepared to pay a price that covers the costs of those calls.

I would call your attention to the fact that there was record evidence in the Joint Board proceeding that subscriber line charges had permitted substantial long-distance price reductions and that, as a result, our Nation's GNP has been increased by $6 billion, 10,000 new jobs have been created, the federal deficit has been reduced by some $1.9 billion below what it otherwise would have been and overall price levels in the economy have been reduced by about 0.1 percent.

At the same time the Joint Board concluded that subscriber line charges have had no adverse impact on universal service, that telephone penetration has, in fact, risen since 1983 from 91.4% to an all-time high of 92.4% today. Our new Link-up America Plan, along with our expanded federal-state matching lifeline plan, can add even more households to the network, households that today cannot afford to obtain telephone service. We estimate that up to 5 million of the 6.8 million households currently without telephone service could be eligible for Link-up America.

With respect to the bypass issue and evidence regarding its significance, it is important to note that the subscriber line charges we have in place have reduced bypass incentives by reducing the gap between "switched access" and "special access" rates. And the expectation that that gap will be further reduced has likely discouraged prospective bypassers from making costly investments in bypass facilities. Nevertheless, the bypass threat remains. In his recent report to the Department of Justice, Dr. Huber found that the privately held base of medium capacity, point-to-point transmission alternatives now exceed the in-use capacity of equivalent RBOC services. And the telephone companies report numerous examples of bypass among large customers.

I would make two additional points on the bypass issue. First, it is difficult to obtain precise estimates of the amount of bypass because prospective bypassers have no incentive to provide information and, indeed, have good reasons not to disclose their plans, to prevent federal and state regulators from taxing, prohibiting or otherwise impeding their freedom of action. Second, uneconomic bypass is the kind of problem that needs to be prevented rather than eradicated. It's a disease that once contracted can't easily be cured. The point is to take steps to prevent the disease from being contracted. That's precisely what we have been trying to do. I think criticism would be justified if regulators failed to take effective action to prevent uneconomic bypass from occurring. Thus, I think actual evidence of pervasive bypass would suggest the presence of a tremendous regulatory failure. Surely we shouldn't have to actually hit the iceberg to justify taking steps to avoid it.

At every turn, we find that competition is prospering. The intense rivalry among the competitors and the fragmented market shares in the equipment and information services markets are well documented. Even in the long distance market, AT&T's share of premium minutes has been steadily falling and its share of capacity is now below 50 percent. Hundreds of firms have entered different segments of the market in different regions of the country and a huge program of capacity expansion is underway. One 1985 survey showed that if all the announced building plans were completed, there would be a fourfold increase in capacity by the end of 1988.

Nonetheless, while the number and capacity of the entering firms are auspicious, the cost of competing successfully in the long distance market is huge. The margins are small and the competitive balance is delicate.

Thus we must be ever vigilant to insure that our regulatory policies do not impede or impair the evolution of effective competition in this dyamic market. We should always be willing to consider regulatory changes that might permit competitive forces to operate more freely to bring benefits to consumers, allow regulation to achieve its goals more effectively at less expense, and be more conducive to the natural evolution of an effectively competitive market structure.

In addition, if there are less resource-intense methods of effectively regulating AT&T, we must also remember that part of the costs of failure to adopt such methods includes the benefits that the wasted resources could have produced had they been applied to other problems. Extensive and complex rate-of-return regulation may mean less effective regulation of, among other things, access tariffs, Computer III compliance plans and the implementation of accounting and other non-structural safeguards.

With respect to possible regulatory changes that affect the interstate market, we are currently considering public comment on the use of streamlined regulation for packet switched and contract services. In these particular areas, where customers appear to have many alternatives and the rivalry among competing carriers is keen, a more streamlined approach to common carrier regulation may be warranted.

Another alternative that I think deserves public attention and debate is the so-called price cap approach. Very briefly, that approach would substitute for rate-base regulation a system of price caps indexed for price inflation, changes in access charges and productivity gains. In addition, we would, consistent with longstanding Commission policy, continue to maintain the requirement for geographically averaged rates throughout the country. By rewarding efficiency, we would give the regulated firm strong economic incentives to lower costs to levels of maximum efficiency and to introduce new and better services. The incentive to shift costs from competitive to regulated enterprises would be lessened. At the same time, consumers would be protected by the caps and share in some measure of the productivity gains this approach would encourage. At this point, I have merely called for public discussion of the so-called cap approach. We look forward to input from Congress in that dialogue.

With respect to the relaxation of the MFJ restrictions on the BOCs and the adequacy of competitive safeguards, the Justice Department has now submitted Dr. Huber's report and its own recommendations in fulfillment of its obligation to review on a triennial basis the continuing need for decree restrictions. Those recommendations are currently being subjected to very intensive scrutiny and extensive public comment. We have supported the Justice Department's tentative recommendations for removal of the absolute bar on RBOC entry into manufacturing, information services, and aspects of the interexchange market.

I think it is important to note that under the Justice Department's proposed approach, the RBOCs would be required to satisfy any conditions and safeguards established by this Commission. As we indicated in detail in our brief before Judge Greene, the Commission has made considerable progress in developing accounting, disclosure and access requirements for the RBOCs.

At present the BOCs are in the process of creating Open Network Architecture ("ONA") plans and are conducting nationwide and regional forums with independent information and enhanced service providers to learn of their needs and expectations. All carriers subject to the ONA requirements will submit ONA plans by February 1, 1988. These plans will be subject to public comment and Commission review prior to implementation. If the comments or our review reveal shortcomings in these plans, revisions will be required.

It is our belief that the Commission, and not the Court, has the appropriate expertise and resources to make these determinations. Furthermore, we believe that these decisions should be made based on the broad public interest standard applied by the FCC, rather than based merely upon antitrust concerns.

OTHER COMMISSION ACTIVITIES

I would like to turn to some other areas for which the Commission has responsibility. As I indicated at the outset, I believe the legal structure governing the operations of the industries we regulate plays a crucial role in determining how well those industries function to promote the public interest. The Congress quite properly takes the lead role in designing an appropriate overall policy framework. Certainly we at the Commission will be following with great interest your deliberations regarding possible changes in the comparative renewal process for broadcast licensees. Let me take this opportunity to offer any assistance or input the Commission might usefully make to help you as you undertake this task.

As you may know, in the programming performance rights area the Commission has recently undertaken an investigation to determine whether to recommend that Congress repeal the current compulsory license law for cable retransmissions of broadcast programming and institute a system of full copyright protection for video programming. We are also considering whether we should reimpose a form of syndicated exclusivity protection for broadcast programming.

Given compulsory licensing, it may be that the Commission's repeal of the syndicated exclusivity rule has introduced distortions into the competitive process governing the production and distribution of video programming to consumers. In terms of the contractual freedom afforded to competing modes of operation and specific competitors, repeal arguably has had the effect of tilting the playing field in favor of cable and the broadcast networks and against independent broadcasters. This anomalistic treatment may distort the operation of competitive processes in ways that reduce the benefits the public derives from an efficiently functioning broadcast service. We want to take a close look at that and will, of course, be sharing the results of our efforts with you.

Another important aspect of the FCC's role as rulemaker and umpire is to provide effective governance for use of one of our Nation's most valuable natural resources: the electromagnetic spectrum. Indeed, while people will always constitute our country's most valuable resource, in the Information Age we are now entering, spectrum is going to become an increasingly important source of our Nation's wealth, and perhaps the most important single area for productivity gains in our economy. It is hard to overemphasize the importance of the Commission's role in promoting efficiency in the allocation, licensing and use of the electromagnetic spectrum.

Specifically, I know that many Members of Congress are interested in the prospects for introduction of HDTV, that is, high density (or definition) television broadcasting. While potentially highly attractive, HDTV raises numerous difficult technical and spectrum allocation issues. The broadcast industry is understandably very much interested in assuring an adequate spectrum allocation for this sevice in the future. At the same time, there are other uses to which this spectrum might be put—for example, in land mobile uses including utilization for public safety and law enforcement purposes. While it is too early to reach any specific judgments, the Commission recognizes that making spectrum available for HDTV could bring important competitive parity and public interest benefits. This is an area we will give careful attention.

AUTHORIZATION REQUEST

We believe that our bi-annual authorization request of $107,250,000 for FY 1988, and $109,250,000 for FY 1989, will provide adequate resources for essential Commission programs and activities. In particular, it will allow us to license those new services which the Commission has implemented in recent years to benefit the American public, such as cellular mobile telephones, low power television, multichannel multipoint distribution service, digital electronic message service, and additional FM stations, particularly for rural and small-town America. This authorization level also allows funding for the newly implemented Fee Collection Program mandated by Congress in 1986, accounts for changes in the retirement system for Federal employees and provides in FY 1989 a modest increase to provide flexibility for minor programmatic changes which Congress or the FCC may determine are necessary to accomplish the Commission's mandate.

We are also requesting an extension of the Travel Reimbursement Program which allows the Commission to accept reimbursement from sponsors of conferences and meetings for necessary expenses incurred by Commission officials attending them.

Regarding the Fee Collection Program, the Commission is requesting a minor change to allow modification of the fee schedule two years after implementation rather than two years after enactment. The new fee program was implemented on April 1, 1987 as mandated by Congress. In past fee programs the Commission has experienced significant public confusion as to the existence of fees and the correct amounts due. It may take up to a year to achieve satisfactory compliance with this program. If the charges are modified after only one year of industry experience with them, the cycle of noncompliance could begin again and cause major disruptions of industry filings. The Commission would also incur costs in re-educating the industry and its staff regarding the new fees. A one year delay in the first fee adjustment would mean that fees would change, if necessary, on April 1, 1989 and every two years thereafter.

Finally, we are proposing two additions to our authorization to allow the Commission to utilize the services of older Americans and volunteers. The "Older Americans" authority would allow the agency to hire citizens, 55 years of age and older, who do not have to compete for positions. These retired persons are paid through a "contract grant" mechanism between the FCC and private nonprofit organizations such as the American Association of Retired Persons (AARP). Given the difficulty in recruiting for some critical vacancies, this authority would provide a strong recruiting base, particularly for short-term, hard-to-fill positions, such as clerks, engineers, accounting technicians, etc. Additionally, allowing the use of non-student volunteers would be useful to the Commission in providing access to a diversity of experiences and backgrounds while also providing exposure to the Commission's activities to the broader group of interested parties.

Mr. Chairman, that concludes my formal statement except to add that, as this is my first hearing since becoming chairman yesterday morning, I'm happy to have this early opportunity to share with you some of my views and, of course, to learn of your interests and concerns. The issues confronting the Commission are often complex, sometimes controversial, but always of great consequence to the nation. I therefore look forward to a close working relationship with this committee and a constructive dialogue from which we both may learn and, most importantly, the American public may benefit.

Senator INOUYE. Thank you very much. My colleague, Senator Pressler, has to be on the Floor at this moment, so he has a statement that he would like to present at this time.

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. Thank you very much, Mr. Chairman, for allowing me to cut in out of order. I have been on the Senate Floor, and I am going back to speak on the issue of the Fairness Doctrine, which is before the Senate at this moment.

But let me say that I think the issues that your agency deals with are among the most important. Coming from a State that has many rural areas and smaller towns and cities, I think it is even more important that we not let the communications revolution, so to speak, occur without including farmers, ranchers, small businessmen, Indians, workers, people who live out away from big city areas.

And that has been one of my concerns on this committee.

Mr. Chairman, I would like to address a number of issues of particular importance to rural America. My constituents are becoming increasingly frustrated with rural telecommunications policy problems, and there is a growing frustration out there that many of our problems are not getting the attention they deserve. I hope that is not the case, but want to take this opportunity to raise these issues with the new FCC Chairman and hopefully work with him in resolving them in the future.

TRANSLATOR APPLICATION LOGJAM

As has been pointed out in discussions surrounding the home satellite dish controversy, there is a substantial amount of area within the United States which cannot receive a broadcast signal. The problem is particularly acute in low population, rural areas where the market cannot support a local broadcaster. There are a number of such locations in my home state, known as "white areas".

During the height of the satellite dish owner controversy, I talked to broadcasters in my state in an attempt to alleviate the problem. What I found is that a solution exists, but it is being delayed through an FCC procedural logjam.

Technology exists which allows broadcasters to expand their coverage to serve the "white areas" through the use of translators. What is more, my broadcasters are ready, willing, and able to serve them. But what I found that they could not even apply with the FCC for approval to install a translator.

Historically, broadcasters have not had a problem with these translator applications. The importance of translators in extending local television service to underserved or completely unserved rural areas has been widely recognized, and applications were always dealt with in an expeditious manner. But then in 1980 the FCC proposed and ultimately promulgated rules for licensure of Low Power Television (LPTV) Stations, and unfortunately decided to process LPTV applications with regular translator applications. No one expected the flood of LPTV applications which followed. The result has been dismal for rural America. By 1983, the FCC was so backlogged it put a freeze on all applications—both LPTVs and regular translators.

The bottom line is that we have a very real need to serve these "white areas," but no longer have the means to meet that need. The problem is not technical. It is not for want of industry willingness to supply the service. It is not for want of consumer demand. It is a bureaucratic, procedural quagmire.

Now I am not here today to "beat up" on the FCC. In fairness, it has attempted to address the problem through placing a cap on the number of applications, etc. And I understand that it has worked in good faith to attempt to resolve the problem. But the fact of the matter is that our underserved areas in South Dakota have a demand that remains unfulfilled, and there appears to be no relief in sight for the foreseeable future. This is particularly frustrating in a state like South Dakota because we are not plagued with the LPTV problems which have caused this mess. The LPTV and regular translator applications should never have been lumped together in the first place. But that is history. What we need—at least in places like South Dakota—is to treat LPTV and translator applications separately.

AM STEREO

Another issue which has not received a great deal of national attention, but has had a major impact upon the broadcasting industry is the reluctance of the FCC to become involved in the AM Stereo equipment standards issue. Here we have a great new technological advancement which could be of great benefit to the public, but which is denied to them as a practical matter because there does not exist a uniform technological standard for the receiving equipment. It has, instead, decided to leave the issue for the marketplace to be resolved. After years of frustrating the advancement of this technology, the problem has yet to be resolved. Although recent studies seem to indicate that a dominant technology is emerging as the industry standard, there are no assurances that the issue will ever be resolved. In the meantime, manufactures are going out of business; radio stations are not advancing for fear of investing in obsolete technology; and most importantly, the public is being denied a greatly enhanced service.

I am all for the marketplace, and for keeping the Federal Government out of private business, but it seems to me that this is one of the very functions for which we created the FCC—to set technical standards for the orderly advancement of broadcasting services.

SATELLITE DISH OWNERS AND "MUST CARRY" RULES

Finally, let me just say a word or two about the home satellite dish controversy; and about the FCC's recent decision on "must carry" rules regarding public broadcasters. I will not dwell on these issues today as I expect we will have hearings which specifically focus on them later on in this Congress. But I cannot let the opportunity pass without letting the new Chairman of the FCC know how disappointed at least one Senator is with the progress—or lack thereof—being made on both of these issues.

With that, Mr. Chairman, I will close my opening remarks so we can get on with this hearing.

Thank you very much.

Senator INOUYE. Do you have a statement?

Senator FORD. No.

Senator INOUYE. Thank you very much, Mr. Chairman.

Will the objectives of the Patrick Commission differ in any respect from the Fowler Commission?

Mr. PATRICK. Mr. Chairman, I am sure that I will have differing priorities from Chairman Fowler, and in some regards, I am sure we will place our emphases in different ways.

No two chairmen are going to administer the agency in precisely the same way.

However, I think that the overriding objective of the Fowler Commission was that of maximizing the public interest, and that certainly is going to be the centerpiece of my administration at the Commission, Mr. Chairman.

Senator INOUYE. Would you like to discuss your top priorities of the Patrick Commission?

Mr. PATRICK. I would be happy to, Mr. Chairman.

I think that we should look at is the way we go about regulating the interstate market.

We have a docket pending now, to which you made reference, which proposes the deregulation of certain submarkets in the interstate market. That is a docket that we will follow with a great deal of interest as the comments are filed.

I have, in a recent speech, Mr. Chairman, called for public discussion of the possibility of moving away from rate of return regulation for AT&T and at least considering the possibility of a rate cap approach to the regulation of AT&T. I think that will be an important discussion to pursue.

The implementation of the subscriber line charge program is something that will take a great deal of the Commission's time, and certainly will be a focus of mine in the coming months.

I say that because, Mr. Chairman, the joint board has recommended that the Commission undertake, and the Commission has agreed to undertake, substantial monitoring of the impact of the final $1.50 in subscriber line charges on the market, on universal service, on usage and on rates. That's something we will want to focus on.

In the area of mass media, we are following with interest the Congress' interest in the matter of comparative renewal. As you know, a bill has been introduced on the House side to consider possible reforms for comparative renewal.

We stand ready to provide whatever input and assistance we can in that area.

The Commission has recently agreed to explore the matter of the compulsory license in the form of a notice of inquiry, which I think is an important docket, and will provide useful information which we will then provide to the Congress, because the matter of the compulsory license is wi~~thin the~~ jurisdiction of the Congress.

We also intend to, and have in fact voted, a notice of inquiry and notice of proposed rulemaking with respect to the possibility of bringing back syndicated exclusivity rules. And that's a matter in which I have some interest. I think it is important, if we are going to rely on competition for regulatory purposes, that we ensure that there is freedom of contract in the programming market, because no market can function very effectively without such freedom.

That having been said, it is not at all clear that it is appropriate to bring back these particular rules. That is an issue which is still outstanding, and would be explored in that docket.

So that, Mr. Chairman, just off the top of my head, those are some of the areas that I know will be occupying our time in the next few months.

Senator Inouye. I see your agenda before you.

Do you have any views on the accountability of the Commission to the Congress?

Mr. Patrick. Yes, I do, Mr. Chairman. My view is that the FCC is a creature of Congress. It was created by the Communications Act in 1934, and a certain amount of what was initially the Congress' responsibility, and still is in an oversight sense the responsibility of the Congress, was delegated to the Commission.

I also understand that the Congress can, by statute, overturn any action of the Commission. I think it will be important for, and I look forward to, a close working relationship with this committee, because as I indicated in my opening statement, the issues with which we are dealing are, (A) tremendously difficult, and therefore, we can use all of the input and the assistance we can get; and (B) of tremendous import to the nation.

And therefore, I think it's very important that we work together very closely.

Senator INOUYE. Your answers have been terrific up until now. Maybe we should stop now.

Mr. PATRICK. That's fine with me, Mr. Chairman.

Senator INOUYE. In its budget submission, the Commission is proposing to allocate radio licenses by auction. How does the Commission now allocate spectrum, and what criteria are used to make this decision?

And where has the present system of allocating spectrum failed?

And if there have been problems with the present system, can they be remedied?

And what will be the effect of this proposal on increasing the diversity of ownership of these licenses?

Mr. PATRICK. Thank you, Mr. Chairman.

Let me start to answer your question by noting that the Commission has proposed legislation that would utilize an auction mechanism for purposes of licensing users of spectrum, as distinguished from making allocational decisions.

Those are two distinct functions of the Commission. But as I say, the proposal is to utilize an auction to determine who should be the licensee, once the decision as to how spectrum should be allocated has been made.

Now the Commission, by this legislation, does not proposed to give up its responsibility for making, in broad terms, decisions with respect to how spectrum ought to be used. The auction proposal would, instead of using comparative criteria, or instead of using a lottery mechanism, allow the spectrum to be licensed to that party who is willing to pay the most for the right to use that spectrum.

And I might note in this regard that the license the party would receive thereby would not differ from the licenses which we grant today; which is to say, it would vest no property rights in that party. It would vest only the right to use the spectrum for a certain period of time.

Let me get to the second part of your question, now, Mr. Chairman, with respect to where the current procedures have failed.

The comparative process that we use sometimes in the allocation of spectrum is difficult to administer. It is sometimes not clear that the comparative criteria that we use are as relevant as they might be to the public interest determination that we are attempting to make in this licensing process.

The costs that are involved in administering the comparative process caused the Congress to consider and finally give the Commission the authority to utilize the lottery mechanism.

The problems that have attended the lottery approach are manifest. They tend to induce massive numbers of filings, sometimes filings by persons that are not interested really in using the spectrum for the purposes for which we have allocated that spectrum.

Instead, they are interested, in effect, in filing a "lottery ticket".

So to summarize, Mr. Chairman, the advantages that we see which might attend the utilization of an auction mechanism for licensing is, number one, that you would cut down tremendously on the administrative costs—both public and private costs of the licensing process.

Number two, it would ensure, at least in some sense, that the spectrum was being licensed to a party that had a very highly valued use in mind for that spectrum, which is to say, it presumptively would go to the highest and best use; at least the fact that they were willing to pay the most is one indication of that result.

And last, and I think this is an important point, Mr. Chairman, we would secure for the Treasury some compensation for what has to be arguably the most valuable natural resource that we have in this country with the exception of human capital. We are talking about spectrum that is worth literally billions of dollars. And we now have a system in which we give this spectrum away for free.

Now we make every effort to comply with our public interest mandate, that is our obligation to ensure that that spectrum goes to the party that is going to put it to the best use.

But the Commission doesn't always have all of the information that it needs to make those very subtle judgments.

So again, getting back to my final point with respect to the potential utility of using auctions, you're talking about a mechanism that would allow us to recoup for the American people, if you will, some measure of the value of this spectrum. And those funds would not go to the Commission; they would go into the Treasury.

So we see a lot of potential advantages to utilizing this mechanism on an experimental basis. We would be very happy if the Commission were given some authority to simply try this mechanism and then report back in short order, in whatever time frame the Congress thought was appropriate, with respect to what our experience is.

We think it is well worth trying.

Let me, if I might, ask our chief of the office of management——

Senator INOUYE. Before you do that, can you also consider what effect it would have on ethnic and racial minorities and women?

Mr. PATRICK. Well, yes, Mr. Chairman, this is something that we have discussed a great deal, and it is very much a concern of the Commission.

The first point to be made in this regard is that insofar as we do not restrict the transfers of licenses after they are placed in the hands of the initial licensees, it is not clear that these licenses don't end up in the hands of the party that is willing to pay the most for them in any case.

So we're not sure that the net impact in terms of the categories of businesses or entrepreneurs that might have access to these licenses is going to change dramatically, at least in the long run, because of the after-sale market.

The second answer to your question, Mr. Chairman, is that we have considered doing various cutouts, if you will, with respect to using the auction mechanism.

We have already excepted from the category of business that would be subject to the auction proposal public safety entities on the theory that they might not be in a position to pay the amount of money that the spectrum might go for.

And we would certainly be willing to explore with the Committee and the Congress other exceptions to try to accommodate these very real concerns.

Senator INOUYE. Don't you think that this would just leave it up to big money to run the media?

Mr. PATRICK. Well, Mr. Chairman, I would point out that we have not proposed to utilize auction authority with respect to any spectrum that can be used in mass media applications.

What we are talking about is spectrum that is used in business applications, business radio, and some satellite applications.

This is spectrum that is used in for-profit very lucrative business enterprises, and our point is that the parties who are going to put this valuable natural resource to that end or to that purpose should have to compensate the American people for that resource, number one.

And number two, the price mechanism used in involved an the auction process would be very useful to ensure that we were putting the spectrum in the hands of parties that were going to apply it in an enterprise which they believe at least is going to well serve the interests of the American people; otherwise, they wouldn't be willing to put up as much money as they would have to to get the spectrum.

Senator INOUYE. Senator Ford?

Senator FORD. Let me delve a little bit further into some of the problems that I and at least some of my colleagues have been following. That's the high definition television or HDTV problem.

And we were pleased that the Commission has apparently at least temporarily backed off on the UHF sharing proposal.

Is that correct, Mr. Chairman?

Mr. PATRICK. Senator, that is correct. We have placed out for public comment a petition which requested that we delay the further action in the UHF land-mobile sharing.

Senator FORD. Since this single question, without a follow up, won't advance us a great deal, let me see what we can do. I want to trace this a little bit, high definition television; something about it bothers me, and I'm not a technician.

I get into communications with airlines, and I get into satellite communications and all that. I get more problems with satellite dishes than I do anything else, and I wish that could be solved some way or another.

But is it your position that broadcasters don't need the UHF spectrum for high definition TV?

Mr. PATRICK. Senator, I think it's a little too early for me, anyway, to make any judgments with respect to whether broadcasters need high definition TV.

Let me give you, if I might, my general impressions. My general impression is that HDTV may be very important to broadcasters as a matter of competitive parity, because other delivery technologies may have access to high resolution or high definition technologies, for instance, VCRs and cable.

So for competitive purposes, it may be important for broadcasters also to be able to avail themselves of high definition television.

But more importantly, because the Commission always must focus on the public interest, it may also be that from a public interest perspective, it is important for the Commission to put broadcasters in a position to access the spectrum that would be necessary to delivery high definition TV.

Our problem, if I might just elaborate for a second further, is that there are many, many services and many technologies that utilize spectrum that might well serve the public interest.

There are always many alternative applications for spectrum. The problem that the Commission has is in making those judgments, in making those tradeoffs.

And those are very, very difficult tradeoffs to make. It is not that the Commission is indisposed toward high definition TV; it's that the Commission is called upon to make a tradeoff.

Is it high definition TV or is it land mobile application? Is it spectrum for public safety? Et cetera. That's the problem.

And with respect to that set of problems, Senator, I would say it's a little too early for us to make those judgments or those assessments, and that's why we're seeking more information.

Senator FORD. Well, will you have the broadcasters in? Will they have an opportunity to work with you as it relates to your final judgment?

Mr. PATRICK. Absolutely, Senator.

Senator FORD. You have no problem with that at all?

Mr. PATRICK. No, sir.

Senator FORD. Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Senator McCain?

Senator McCAIN. Thank you, Mr. Chairman, and welcome, Mr. Patrick. And I hope you find your new assignment an enjoyable and interesting one.

Mr. PATRICK. It has certainly been interesting, Senator.

Senator FORD. He never knew a dollar and a half was so costly.

Mr. PATRICK. Exactly.

Senator McCAIN. I would like to discuss with you just for a moment this issue of the subscriber line charges that I am sure you are very familiar with.

In my State of Arizona we have adopted a lifeline program, which basically provides a limited number of telephone calls to people at certain income levels and age levels, at dramatically reduced price.

You are very familiar with these programs.

Mr. PATRICK. Yes, sir.

Senator McCAIN. How widespread are these programs, and how important are they in your estimation?

Mr. PATRICK. Well, let me give you a general answer, which is that they are tremendously important in our estimation.

We are working very closely through the joint board and with the states directly to encourage various types of lifeline programs. As you know, we participate in the lifeline program on the Federal end by up to the full amount of the subscriber line charge for qualified low-income subscribers.

We also work very closely with the states, encouraging them to provide these lifeline programs. We think they're terribly important.

At the present time my understanding is that approximately 13 states have adopted lifeline programs in which we participate.

Senator McCAIN. What do we have to do to get 50 states to provide these services?

It is my opinion that the concern of members of this committee, including my colleague from Tennessee, is the effect that increasing telephone rates have on senior and low income citizens.

I don't think any of us, including yourself, want to deprive those people, specifically elderly people who are living alone, of the ability to communicate with the outside world.

I believe that an enormous amount of pressure could be relieved if you could assure the Congress that this kind of program was available to people at certain income levels and certain ages.

So my question to you is, it is not helpful to me that only 13 out of 50 states have inaugurated these programs. What do we need to do, short of Congress interfering again, to see that these kinds of programs are made available in the other 37 states?

Mr. PATRICK. Senator, you make several excellent points, and we couldn't agree with you more.

We think that lifeline programs are tremendously important. This Commission has historically been committed to preserving universal service. And in fact, I would like to see, in the next couple of years, while I'm chairing this agency, an increase in telephone penetration.

To answer your question specifically with respect to what we need to do, let me mention that in connection with this latest decision on subscriber line charges, the Commission has voted to expand our lifeline program to include the so-called linkup America program.

What we have found is that one of the largest barriers to telephone penetration is not so much the cost of service per month but rather the initial connection fees which in many states are substantial.

And therefore the Commisson has voted to provide, effectively, a subsidy through interstate lone-distance rates to help defray some of those initial connection fees for qualified low-income subscribers. We will provide one-half of those costs, up to $30, and pay interest on any deferred payment program that a State might put into place. This new program is designed to help persons get on the network in the initial instance.

Let me be more specific in answering your question by saying that one of the things that I want to do in the next few months is to initiate a major media blitz with respect to both the lifeline program and the linkup America program, because I think part of our problem is just making the information known; making it known that the Federal Government, through interstate long-distance rate stands ready to help subsidize these costs so that we can get these programs in place.

Senator McCAIN. Do you have any other methods of motivating the other 37 states to inaugurate lifeline programs?

Mr. PATRICK. To date, we have worked essentially through the joint board, which as you know consists of state public utilities commissioners working with the Federal FCC commissioners. We have found that mechanism to be reasonably effective in terms of getting the word out.

We also get the word out by speaking at conventions, the National Association of Regulatory Utility Commissioners, an association of State public utility commissioners.

So we have these institutional mechanisms. I think what we need to do now is to add to those institutional mechanisms some good old fashioned PR work to get the word out.

Senator McCAIN. I would suggest that part of that PR should be that there is legislation, such as the legislation proposed by my colleague from Tennessee, Senator Gore, that would prohibit subscriber line charge increases unless these programs are put into place.

Would you take that as part of the PR program as well?

Mr. PATRICK. That's not exactly the PR program we had in mind, but it certainly does address to the issue.

Senator McCAIN. Well, in all seriousness, I hope it would relate to the issue, because this I think is the key to it.

I don't think that most Americans are resistant to seeing this increase in subscriber line charges where it is justified for various reasons, including a reduction in long distance rates.

But I do believe that if we are depriving senior citizens of the capability of communicating with the outside, not only because of installation fees, but because they are on fixed income and they see their telephone rates increasing every month, I think there is going to be widespread and justified resistance.

And I hope you would agree with that assessment, because certainly that is what I am hearing from my state.

Mr. PATRICK. I do agree with that assessment. I think it is very important that we get the word out with respect to this program.

These are tremendously complicated issues, and we at the Commission don't purport to have a corner on all the answers that relate to these issues.

We think that the joint board recommendation by the Commission is a balanced decision, a good judgment. We think that it will well serve the interests of consumers in the long run.

But these are complicated issues. Therefore, the burden of, and the difficulty of, communicating the various facets of the decision are even more apparent.

That is why I am going to prioritize precisely the sort of issues that you are raising now, Senator; getting the word out, explaining the decision in a way that is comprehensible, and making it clear that in the long term this subscriber line charge decision is necessary to preserve the integrity and the strength of the telecommunications network and will prove very beneficial for both business users and consumers.

But it's a tough burden because these are difficult issues. We are going to make every effort.

I would like to add, Senator, that we would very much enjoy the opportunity of working with the subcommittee on efforts to get the word out to the various States.

Senator McCAIN. Thank you.

Senator INOUYE. Senator Gore?

OPENING STATEMENT BY SENATOR GORE

Senator GORE. Thank you. Welcome. I appreciate your courtesy in coming by for a visit the other day. I enjoyed talking with you and enjoyed working with your people at the Commission.

I noted to you privately we had a number of disagreements, but we have a good working relationship and I wish you well in your new capacity.

Mr. Chairman, this is an important hearing not only because we are faced with the prospect of reauthorizing spending for the Federal Communications Commission, but because we have a new Commission chairman now in place, and one we have not had the opportunity to question as such.

Mr. Patrick's confirmation hearing during the last Congress was brief in the extreme—about 15 minutes. So I am looking forward to hearing more from the new Chairman. As we all know, while each Commissioner has one vote on all rulings, not all commissioners are created equal. The chairman sets the tone, the staff agenda, the public image of the FCC in a very tangible way. I am hopeful that Mr. Patrick will set his own chart at the Commission, that he will not be, as some critics have observed, simply a clone of Chairman Fowler.

As communications policy moves—rapidly I hope—into the post-Fowler era at the FCC, the country needs more than simply a change of faces. It would be difficult to come up with a better characterization of Chairman Fowler's tenure at the FCC than that of Tom Shales, writing in Monday's *Washington Post*:

> Six years of anything goes, devil-may-care, public-be-damned deregulation—We are as well rid of him as the indignant villagers were well rid of Dr. Frankenstein—a mad scientist who kept trying to burn down his own laboratory.

And, while Mr. Shales was writing about the FCC's abysmal abdication of the public interest in broadcasting issues, the same horrid record applies to so much of the Commission's involvement, or non-involvement, in other telecommunications matters. To mention a few examples—

—the FCC's bizarre schemes to auction off public satellite spectrum space;

—the roller-coaster, shaft-the-consumer access charge rulings;

—the on-again, off-again "must-carry" spectacle;

—the highly-prejudiced home satellite dish study, undertaken to abort a legislative effort, and culminating in as biased a record as might be imagined;

—years of foot-dragging on brutally violent, sexually-explicit broadcast programming;

—a total sellout of the Commissions responsibilities in the area of children's television, not only the lack of educational content, but the more recent, outrageous interactive war toy programming during children's viewing hours.

So, Mr. Patrick, on that light comment on your predecessor, we welcome you before the committee, and look forward to your testimony and answers.

Mr. Chairman, I do want to add one additional comment. While some of us have strongly disagreed with the opinions and rulings of the Commission over the past six years, I think we can say that the commissioners and staff, from the chairman on down, have been responsive and helpful with information and assistance to Senators and their staff on matters of clear importance to our constituents. For that the FCC deserves our appreciation.

Let me turn to one particular issue—the recent Commission rule on a new round of access charges. Today I am introducing a bill to freeze these federal telephone charges. This will be a companion to the Wyden bill, which is gaining considerable support in the House, and one which I believe will develop rapid support in the Senate.

The purpose of the bill is to reverse the unjustifiable decision last week by the Federal Communications Commission to load a new round of long distance access charges onto all telephone customers, regardless of whether they make long distance calls or not.

The FCC is about to drive the $2 per month "subscriber line charges" (formerly called "access charges") for residential telephone customers—to $3.50 over the next two years. And no observer of the Commission's past conduct in this area can trust the FCC's assurance that the federal charges will stop at $3.50.

No single issue more dramatically illustrates the winners and losers in recent telecommunications policy than the Commission's access charge decisions. The FCC theory is that local customers, whether or not they make long distance calls, should pay an increasing share of the cost of providing service access to the competing long distance companies.

The FCC customer charges started in 1984 at $1 per month for residential users, and doubled to $2 per month last June. The original

FCC proposal pegged these charges at $4 per month, per line, increasing annually to $7 per month, but legitimate outrage among consumer groups, older citizens, advocates for the poor, small business managers, and many others led the Congress to advance legislation constraining the FCC's scope in this and other technical areas of telephone regulation in the wake of divestiture.

The Commission got the message: the public would not stand for wholly unjustified shifts in telephone costs from large users to small. The final FCC rule closely followed the legislation, and residential and most small business customers were spared the bulk of what amounted to a new subsidy for large business customers.

The FCC promised that no further increases in the federal access charges would occur until a thorough Commission study was completed and the impact of rate increases assessed. Supporters of these access charges claim that local customers must pay a greater and greater share of providing long distance service in order that the threat of "bypass" can be reduced.

However, there is no evidence that the federally-mandated access charges have reduced bypass at all. In fact, large business users will continue to purchase equipment and services to reduce their telecommunications costs. A new round of federal access charges simply loads more costs onto small businesses and residential customers without diminishing bypass. In other words, the gap between the winners and losers will get wider.

Another justification for forcing local customers to pay these federal access charges was that their long distance charges would drop dramatically, largely because they would be able to take advantage of competitive long distance services. The problem with that view is that most rural customers do not have direct access to these competitive services. Again, the gap between the winners and losers widens under the new round of federal access charges.

The Telephone Consumer Rate Equity Act" which I will introduce later today would freeze the current charges. The evidence fails to support any level of access charges for telephone customers who make few if any long distance calls. However, a total rollback of the existing charges may create special problems for telephone companies. Therefore, for the time being, we can at least prevent these new federal charges from being imposed.

Mr. Chairman, I believe this Committee cannot ignore another round of FCC mandated access charges. I hope we can thoroughly scrutinize last week's decision, and consider legislation such as mine as soon as possible.

Thank you.

I will have some questions for the record because time is limited here. What I would like to concentrate on in the time we have for an interchange here is the same subject that my colleague from Arizona began discussing a moment ago, and that is the FCC's proposal to increase the subscriber line charges for telephone customers throughout this country from $2 a month to $3.50 per month.

Now what we are really talking about here is which group of customers, customers of the local service or customers of long distance service, will pay what percentage or what share of the cost of equipment and lines that is used for both long distance and local service.

There has been a general feeling on the part of many that in the past the long distance customers were asked to pay too much of the joint and common costs for these facilities that carry both kinds of telephone calls. Leaving aside whether that feeling was accurate or not, I totally disagree with the Commission's policy of shifting more and more and more of the burden toward the local telephone customer.

Now just, if you could give a short answer to this preliminary question if possible, to set the stage for those that follow. Is it not correct that in essence what the Commission's decision does is shift more of the cost of this shared equipment to the local customer as opposed to the long distance customer?

Mr. PATRICK. That is a very difficult question to answer in the way you have phrased it because, as you know, customers of the network utilize that network for both long distance and——

Senator GORE. I am going to get to that. I was hoping that preliminary question would not throw you.

Mr. PATRICK. Well, it did throw me for that reason. Customers use the network for both——

Senator GORE. Let us say that two customers, one of whom makes no local calls, just makes long distance calls, and the other customer makes only local calls and no long distance calls. That customer will be sharing more of the burden under this decision. Correct?

Mr. PATRICK. That is correct.

Senator GORE. Thank you. I just want to start with the simple ones first.

The surveys show that in Tennessee 40 percent of local customers, 40 percent make no interstate long distance calls whatsoever. And in rural exchange areas served by co-ops and independents, 60 percent of the customers make zero interstate long distance calls.

Now do those figures conflict with the FCC findings nationwide?

Mr. PATRICK. Senator, if I may, let me call on the chief of the common carrier bureau, Bert Halprin, who has looked at some of those numbers, for a response.

Senator GORE. If you can be brief, I would appreciate it.

Mr. HALPRIN. There is a range, and the numbers you are referring to have to do with the number of customers who do not make calls in any given month. Over a year, every statistic we look at shows that over 90 percent, approximating 95 percent, of the residential consumers make long distance calls in a given year.

Senator GORE. All right, you are shifting figures now. In any given month, on average, about 40 percent make no long distance interstate calls whatsoever. Now those are the figures that I have. If you want to deal on that grid and supplement the figures for the record, please feel free to do so.

But I know those figures are correct for Tenessee, and I am given to believe they are not very different from what they are nationally.

Now Mr. Patrick, for the 40 percent in Tenessee who make zero long distance calls, they are going to have to pay a $3.50 per month to subsidize those who do make long distance calls and to subsidize the national telephone marketing companies that call them on the telephone and get them up from the dinner table and say can I speak to the man or woman of the household please.

They are going to pay the $3.50 per month, even though they make no long distance calls. Correct?

Mr. PATRICK. The last portion of your question is correct, because those are the facts that you have asked me to stipulate to. So yes, that is correct.

Senator GORE. If it is not true do not——

Mr. PATRICK. You indicated that these customers were making no long distance calls. Correct?

Senator GORE. Correct.

Mr. PATRICK. Under those circumstances, yes, they would be paying an additional increment of cost, even though they were not utilizing the network for long distance purposes.

Senator GORE. If a customer is making no long distance calls, what is fair about that customer subsidizing competition between long distance companies that they do not use and get nothing from?

Mr. PATRICK. Senator, the answer to that question, I think, requires some explanation, and I know you are familiar with these facts. But let me elaborate a bit.

That customer, the one who does not make interstate long-distance calls, would not be subsidizing long-distance companies. What we are talking about here is the cost of fixed plant that is in the local telephone network. We refer to it as the local loop between the end user and the local telephone company. We did not create those costs: we cannot make them go away. They are there. They are fixed, and they are going to be the same whether or not the network is used by any given residential consumer more or less for long distance relative to local. They are fixed costs.

What we are faced with is the question of how we most efficiently recover those fixed costs. Now, in an era in which the costs of bypass technology were very, very high, we were able to sustain a situation in which a large percentage of those costs were shifted to the interstate long-distance customers through the per-minute carrier common line charge. That is what happened for years.

The Commission didn't all of a sudden decide one day that we were going to shift it back for no apparent reason. What we saw happening was the cost of bypass technology come down. When the cost of bypass technology came down, that shifting of cost to interstate long-distance customers on a per-minute basis was no longer sustainable.

With that level of cost being passed along to inter-exchange carriers and large users who had heavy long-distance usage, they had great incentives to leave the network.

We are trying to balance short run and long run considerations here. The equitable considerations you raise are well taken. They are considerations which we gave long and considered attention to in our deliberations.

But we cannot ignore the long run consequences of allowing a very largeportion of these fixed costs to be collected through the per-minute carrier common line charge in a situation in which the costs of bypass technology are such that we are seeing bypassed.

If the Commission had not taken the actions it took with the initial $2, and in my view, if the Commission did not add this additional increment of $1.50, the rural customer would eventually be much worse off—even that rural customer who does not use the network for long distance. The reason for that is we would see more and more large business users leave the network.

And that does not change the cost equation. The costs are still there. They are still fixed costs, and someone has got to pay it.

Senator GORE. All right, let me interject there if I could, because when you talk about bypass you are just sort of taking it for granted that the only kind of bypass that goes on is long distance bypass. In fact, if you look at the facts, there are large bypass operations going on in local telephone loops.

There are many urban areas around this country where a handful of large commercial users make up a substantial portion of the local telephone service that is being used in that telephone loop. To the extent that local telephone rates are pushed up by the access charges, there is the same kind of incremental incentive to push people toward local bypass, and it is not just General Motors or large corporations. It is nursing homes and hotels and a lot of other local users. So I think that bypass has to be looked at from both of those perspectives.

Secondly, I have seen no evidence offered by the FCC about the extent to which the access charges have slowed down long distance bypass to any extent. There has been no evidence presented to this Committee, there has been no evidence presented in the Commission's proceedings that I am aware of to show that it has had an impact on the rate of bypass that is going on.

Now, thirdly, can we get an assurance from you that this $3.50 charge that you are talking about, which I think ought to be rolled back to $2, and I am introducing legislation today with respect to this, can we get any assurance from you that $3.50 is a ceiling? You are not going to go any higher than $3.50? Is that something firm?

Mr. PATRICK. Yes, Senator. The recommendation of the joint board was that the final installment of $1.50 would be a final increment for subscriber line charges and that is reflected in the order that the Commission——

Senator GORE. Never go above $3.50?

Mr. PATRICK. Well, I can not personally promise you that it will never go above $3.50——

Senator GORE. Oh, well I thought you said a moment ago that that was it.

Mr. PATRICK. Let me answer your question this way. It is the Commission's intention to have that be the final increment and it will never go above $3.50.

Senator GORE. Until the next time.

Mr. PATRICK. Well, my only hesitation had to do with the fact I can count on being Chairman of the Commission only for the next two years. As a legal matter, any later Commission could reconsider our order, just as the Congress could reconsider any Commission order.

But the order of this Commission is that this is the final increment, and I can give you my personal assurance, Senator, that I will not seek any increase above the $3.50 level.

Senator GORE. Well, I have taken more than my time, and I would just like to conclude, Mr. Chairman, by saying that they started out talking about $6 per month, and the only thing that has pushed the subscribers line charges down is the political uproar that has come in areas where people do not use long distance that much, in areas where people think the local rates are already too high, and I have no confidence at all that this $3.50 is going to last for very long.

I think we need legislation to cap it at $2 and to have a fair distribution of the costs of this joint and common equipment that is used both for local and long distance. But I will be pursuing that in the deliberations of the subcommittee and I appreciate your courtesy and indulgence, Mr. Chairman.

Senator INOUYE. Thank you. Senator Stevens?

Senator STEVENS. Mr. Chairman, I am pleased that you are here and I am here at the same time to welcome a fellow surfer, who has become prominent. I remember so many people much younger than I am now used to say that surfers could never amount to anything. Mr. Patrick is a good surfer and I am pleased to see him where he is.

Senator FORD. You say, fellow surfer?

Senator STEVENS. Fellow surfer.

Senator GORE. I heard that too.

Mr. PATRICK. Thank you, Senator Stevens. We certainly just proved all those people wrong.

Senator FORD. Time will only tell.

Senator STEVENS. Beyond that, Mr. Chairman, I hope we can talk him into making a nice loop and go to Hawaii and come back to Alaska, or go to Alaska and come back to Hawaii, because that is where the real problems are.

My good friend from Tenessee, who has talked a great deal about the user charges, from my point of view the real question is whether low-income users and users in high-cost areas are treated properly and get adequate support from their system.

I come from, as you know, a state that is one-fifth the size of the all the United States and the Senator from Hawaii is in a state that looks small but is very large in terms of its distances between islands.

I think we have to keep the Commission's attention to some of the problems of the off-shore areas, as you get mesmerized by some of those in areas where they have, I think, sort of stratified service. The problems are not developing, they are, as a matter of fact, have been too well-defined for too long. I hope that the subscriber line charge that you are now discussing will provide the relief that many people believe it will.

I, Mr. Chairman, would like to talk a little bit about some of the other areas. I am just thinking a little bit about the fact that this is the 200th anniversary of our Constitution and in the Constitution it talks about the duty of Congress to maintain post office and post roads.

I suppose if we had a Constitution right now framed it would be one that would say the FCC has the responsibility to ensure adequate access to cable systems, to telephones and unfettered use of home earth stations and a few other things in the Constitution.

I am really serious, though, because you have some developing duties now that are not framed in the constitutional sense. Congress has been unwilling to legislate and give you guidelines, and yet we have, and I am one of those who joined in this, been very free about criticizing you as you just were about to make decisions.

Now there are some decisions, and we are on the floor right now on one, that you did not make. That was in terms of the Fairness Doctrine. I hope that we have learned a lesson from that.

Maybe I am being too obtuse about that. I really do think it would have been much better if the Commission had come to a conclusion and were debating that conclusion rather than putting into effect the rule that did not work.

This bill that is out there now that I will vote against, and the Committee knows that, that will try to put into law an administrative rule that has not worked. I just wonder whether some of these other areas that you are going into, and you have outlined them in your statement that I have read, are so diverse that you are not going to get them done either.

Do you think that the Commission is taking on too much work right now, Mr. Patrick?

Mr. PATRICK. Well Senator, I have become personally aware in the past few days of just exactly how much work the Commission has taken on. We certainly have a wide range of responsibilities with respect to very complex issues. The Commission does not go out looking for additional responsibilities.

From time to time the Congress adds responsibilities to our plate, which of course, is appropriate. But I think that the single most important factor in the work load, if you will, is probably technology. Technology is evolving rapidly and that creates new issues with respect to old technologies and it creates the potential for new technologies.

The would-be users and sellers or those new technologies then come to the Commission and ask for spectrum and ask for regulation or deregulation. The list goes on. So technology is really driving the work load to some extent, Senator.

Senator STEVENS. Have you had a chance to examine the adequacy of your authority to deal with these issues that are pending before you? Has Congress denied you authority in any area that you feel you should have to make decisions in this field?

Mr. PATRICK. Senator, I do not think so. We have so far as I am aware, and that of course is a question which covers a broad range of issues, and if I could I will reserve the right to supplement the record if something occurs to me later or something comes up in discussions with my colleagues. But in general I think the Commission's authority is adequate.

Senator STEVENS. And you have discussed your authorization request, which I believe for this year would be, for fiscal year 1988, $107,250,000.

Mr. PATRICK. That is correct, Senator. I might add to my earlier comments about the Commission's authority. We will be in the next few months submitting to Congress a legislative package as we do each year and those issues often, or that package often touches on jurisdictional questions.

Senator STEVENS. I would look forward to that and I would hope the Committee would too, because I think some of the problems we have had with the Commission have been the result of Congress' failure to address some of these issues ourselves and deferring them to your Commission.

But I just wonder whether, in view of your expanding role and the importance of your Commission now to the consuming public, whether you really have an adequate allowance for your expanding activities to deal with the increasing complexity of technology in your fields.

Do you think you have got enough money to get the proper capability to deal with all of these problems?

Mr. PATRICK. Senator, you are certainly correct with respect to the complexity and the range of problems. We are all operating in an era of necessary fiscal restraint and we are trying to be good soldiers in that regard.

It is our judgment that we can execute the responsibilities that Congress has vested in us with the roughly $107 million that we requested for fiscal year 1988.

Senator STEVENS. I hope you believe that I am trying to be as friendly as possible, but I seriously question whether you have the computer capability to deal with the technology in the areas that you are supposed to monitor for the public. Do you really believe you have the computer capability to do the job at the Commission that needs to be done?

Mr. PATRICK. Well, Senator, this touches upon an issue that is one of substantial importance to me and to the entire Commission.

We are moving, as you know, away from structural separation safeguards, with respect to the types of services that can be provided by AT&T and the regional Bell Operating Companies. And we are relying more and more, as your question supposes, on non-structural safeguards that involve computer capacity.

I asked that precise question some weeks ago and was told that, yes, we do believe that with the budget that we are looking at for fiscal year 1988, we will be able to put ourselves in a position not only to execute the responsibilities that we have had heretofore, but to put the sort of resources that we will need into these new areas, like computer capacity.

Senator FORD. You did not ask him what his request of OMB was.

Senator STEVENS. My friend from Kentucky is reading my mind, because I was just about ready to ask you, how much did you really ask for? How much did the Commission really ask for from OMB?

Mr. PATRICK. This budget, of course, was negotiated by my predecessor. So let me turn this over to the managing director, Ed Minkel.

Mr. MINKEL. We requested a $104 million and we got approximately $100 million. We felt the amount was livable, in that we can do it, and as the Chairman mentioned, we have just reviewed the computer program for common carrier and for USOA and we have money allocated this year and we have money in the next year to accomplish the USOA program.

Senator STEVENS. Would that computer capability rely to a great extent upon the regional Bell systems' in-house computer capability? That was what I was informed, that we really are going to be monitoring their capability. Is that right?

Mr. PATRICK. Obviously the Bell operating companies will use their computer systems in compliance with our accounting orders, which we have recently adopted. We also have, and I think this was a very appropriate move, we have also required that the Bell operating companies secure independent audits annually that will demonstrate compliance with the accounting order that the Commission recently adopted. So that is also helping to save the Commission some resources.

That is not to suggest that the Commission will not conduct its own independent review of the data and the material in the compliance program that is filed by the various telephone companies. But it is to say that we are relying in addition upon the new requirement that these companies secure an independent audit. I think that that is something that the agency is going to have to look to more and more in the future—the idea of shifting the burden to the parties with the information and with the incentives to provide the data that we need to ensure that there is compliance with our safeguards. That is essentially what we have done in a small part by requiring that the companies secure independent audits.

Senator STEVENS. I do not want to pursue that any further but I have a great interest in that area, Mr. Chairman.

I think we have got to show ourselves that we are not just equipping a commission to monitor the accuracy of information that is provided by those that they are supposed to be regulating in the public interest. But rather to have some capability to actually get into those systems and check the computers to find out how they really impact the consumer in the long run.

I really do not think we are at that point yet, Mr. Patrick, although from what you say, I do not think we are in disagreement about what your job is. I appreciate your courtesy. Thank you.

Mr. PATRICK. Thank you, Senator.

Senator INOUYE. Senator Pressler?

Senator PRESSLER. Thank you, Mr. Chairman, for allowing me to come back from the Senate floor after speaking there on the Fairness Doctrine and to ask a few questions.

First of all, Mr. Patrick, you are aware that there are a number of areas known as white areas where there is not enough population to support a local broadcaster and as a result there is a substantial amount of area within the United States which cannot receive a broadcast signal.

Mr. PATRICK. Yes I am, Senator.

Senator PRESSLER. Now, during the height of the satellite dish controversy, I talked to broadcasters in my home state in an attempt to alleviate that problem. What I found is that a solution exists but is being delayed through an FCC procedural logjam, as I understand it.

Technology exists which allows broadcasters to expand their coverage to serve the white areas through the use of translators. What is more, my broadcasters are ready, willing and able to serve them.

But what I found is that they could not even apply with the FCC for approval to install a translator. The reason is that there is such a backlog at the FCC of applications of both LPTV and these types of applications.

Now as I understand it, historically broadcasters have not had a problem with these translator applications. But they do have a problem how because of the large backlog. Is that a problem and what is going to be done about it?

Mr. PATRICK. Senator, first of all, let me say that the concern which you express is one which we share and I personally share. We do want to do everything we can to ensure that nothing in the way of the Commission's procedures are precluding the provision of service to rural areas and to the so-called white areas.

Yes, Senator, there is a problem with the volume of applications that we have received for the low power service. And as you know, there is not a great deal of technical difference, if any, between the translator service and the low power service. It is a regulatory distinction, in effect.

We have had a backlog as a result of the volume of low power television applications that have been filed. We are very much aware of and sensitive to that problem. I am hopeful that we will be able to alleviate this backlog in the near term by moving towards a new application processing procedure, which will utilize windows as distinguished from the procedures that we have used in the past.

We are hopeful that this procedure will help us to expedite the process of processing these applications so that we can get the low power applicants taken care of. But importantly also, so that we can process the applications of those parties who want to provide——

Senator PRESSLER. What do you mean by using windows? What kind of windows? For example, the LPTV applications have not stacked up, they have not come from rural areas so much but that is where many of these other types of applications are from. Are you going to prioritize or how are you going to solve the problem?

Mr. PATRICK. Precisely because this was a matter of concern to Chairman Fowler and continues to be a matter of concern to me, we have asked Jim McKinney, chief of the mass media bureau, to look at this question and the Commission, as I say, has taken action to try to alleviate this backlog.

Let me have Jim explain to you exactly what we have in mind in terms of expediting the application process, if I might.

Senator PRESSLER. Well, yes, but in addition to explaining, give me some assessment. As I understand it now the broadcasters cannot even apply because there is such a backlog. There has been a freeze on all applications. But this is caused by the LPTV application stackup.

What I am talking about is something different. It is these translator applications and so when, can you be specific as to when they might apply?

Mr. PATRICK. Mid-June is the date at which we are going to lift the freeze.

Senator PRESSLER. Pardon me?

Mr. PATRICK. Mid-June, sir.

Senator PRESSLER. Mid-June you are going to lift the freeze. Now is this because you have lacked enough personnel over there?

Mr. PATRICK. I think that it is fair to say that we did not anticipate the volume of applications that we would receive in the low power service and we were not able to process them as expeditiously as we would have liked to, yes.

Senator PRESSLER. Well, in the budget request, and of course you were not responsible for the the budget request, was there some mention of this? Was there any request to deal with this problem, for additional people or was it thought that you could do it through using this system of windows?

Mr. PATRICK. Jim, why do you not take that?

Mr. MCKINNEY. We received a good shot of extra manpower just the year before last for low power television, and our real problem during that period of time when we placed these new people in the processing line was that the lottery process that was established for this service, and by statute as well, simply caused us to receive 30,000 applications for approximately 1,000 possible transmitters.

Those created what we call "daisy chains" at the FCC, the interlinking of one application and another with another to the point that they spread across an entire state. The new process will kick in when we accept those new applications in June. It should not be a problem.

Senator PRESSLER. Of that 30,000, I bet there are not more than a couple of dozen applications from white areas, so to speak, for the translator applications from broadcasters. So we have sort of two categories here.

Will there be a priority given to applications affecting white areas where broadcast signals are not received under your new plan which you are going to implement in June, Mr. Patrick?

Mr. PATRICK. The new plan does not contemplate a priority for translators. The problem there, Senator, is that as a matter of technology there is no difference between the translator service and the low power service.

Were we to attempt to prioritize the translator service, we would have a situation in which a great deal of regulation would be required by the Commission to ensure that those applicants who were licensed as translators, operated as translators and did not operate as low power television stations instead and vice versa.

We considered this question, in fact I dare say the Commission has considered this question of attempting to prioritize the translator service on several different occasions. And we resolved that we could better serve the interests that you are quite correctly interested in serving, in terms of getting the translator service out there, by focusing upon the administrative process in general.

And that is what we have done. That is what we did when we adopted this window process. We think that will alleviate the problem. If it does not, Senator, I will be perfectly happy to take another look at it. We are hopeful that mid-June we will get these applications out.

Senator PRESSLER. I would very much like to have a followup meeting with you. My point is, is it not possible to deal separately with regular translator applications in states like South Dakota, where you do not have the LPTV problem?

We are sort of suffering from the multitude of those applications by being thrown in the same batch, you see? And they are quite different things. Do you think we could possibly deal separately with regular translator applications in states similar to South Dakota or in South Dakota, if you want to put it that way, where you do not have the LPTV problem?

Mr. PATRICK. I am consulting, of course, with Jim McKinney because Jim is the person on the line in terms of these administrative issues. I am told that it is impossible, given our present procedures, to distinguish by state. They are all received in one group and therefore it would not be possible, given the way it is structured at the present time.

Mr. MCKINNEY. May I make one point? About 80 percent of all the low power stations that actually go on the air are in fact used to translate. So in many cases your local network affiliates, your local television stations are quite pleased to have even a low power television station come on the air because most of their program is then simply translated programs from an existing station.

Senator PRESSLER. Sure, but that still does not solve the problem in a white area where nobody is really that interested in going into.

Mr. MCKINNEY. But from a more distant, full power station, frequently they will be able to get their programming out on a low power television station. They are indistinguishable, I guess, is what, technically they are totally indistinguishable. Low power from translator.

Senator PRESSLER. Well, we are not going to be able to resolve this problem today, but I would like to work with you on this and perhaps we can meet soon on this specific issue. I would like to.

Mr. PATRICK. I would be happy to, Senator.

Senator PRESSLER. Let me go to another subject here very quickly, if I can. That is regarding AM stereo. That is another issue which has not received a great deal of national attention. But it has had a major impact upon the broadcasting industry, as a reluctance of the FCC to become involved in the AM stereo equipment standards issue.

Here we have a great new technological advancement, which could be of great benefit to the public, but which is denied to the public as a practical matter because there does not exist a uniform technological standard for the receiving equipment.

Now the FCC has instead decided to leave it to the marketplace. But as a practical matter it is a real problem. There are no assurances that this issue is going to be resolved by the marketplace. In the meantime manufacturers are going out of business, radio stations are not advancing for fear of investing in obsolete technology. And most important, the public is being denied a great enhanced service.

I am all for the marketplace and all for keeping the Federal government out of private issues, but it seems to me that this is one of the very functions for which we created the FCC, to set technical standards for the orderly advancement of broadcast services.

What is your reaction? Can we expect your FCC to move in this AM standard area?

Mr. PATRICK. Senator, this is probably one of the most difficult areas that we deal with, the question of technical standards. There are concerns on each side of this question. The Commission often finds itself in the position of setting standards which become technologically outdated very quickly, and that has the impact of disserving the public interest.

That was the concern that the Commission had at the time that it voted not to adopt an AM standard and to allow the marketplace to evolve and develop a standard through the marketplace mechanism. That process is working. It has been slow. There certainly has been a lot of criticism and a lot of concern about the evolution of AM stereo.

The specific answer to your question is that the initial AM stereo decision was made some time ago. I was more comfortable with the decision that the Commission made in the case of TV stereo where we established a standard but in effect did not lock that standard in so that technology could evolve.

But, going back to your initial question, I have no plans to bring the AM stereo matter up in the near term, with the exception that, as you know, NTIA is looking at and testing a dual system receiver and we are hopeful that it may provide some solution to this dilemma. We are looking forward to the results of that testing process.

Senator PRESSLER. But you would agree that in this area the marketplace has not yet worked?

Mr. PATRICK. Well, I am not sure I could agree with that. I do not have the data right here with respect to the evolution of the two systems. But it is my understanding that the C-QUAM system has clearly predominated in the market, although the KAHN system still has some use in the market.

So I am not sure we can say that the market has not worked. It has worked slowly, but the market seems to be revolving around or evolving to a particular mechanism here.

Senator PRESSLER. The point is on a consumer-wide basis there is not AM stereo available. I think it is one area where the FCC should act to resolve the problem.

Let me conclude by just making a comment, a word or two about the home satellite dish controversy and about the FCC's recent decision on must-carry rules regarding public broadcasters.

I will not dwell on these issues today as I expect we will have hearings which specifically focus on them later in this Congress. But I cannot let the opportunity pass without letting the new chairman of the FCC know how disappointed at least this Senator is with the progress, or lack thereof, being made on both those issues.

With that Mr. Chairman I yield back my time.

Senator INOUYE. Senator Exon?

Senator EXON. Chairman Patrick, the FCC recently issued a report that concluded that the marketplace was working with regard to the descrambling of signals. I have heard from many dish owners, saying that the marketplace is simply not working.

Could you comment on this matter briefly and tell me where do you think we go from here, or is that the official position of the FCC at this juncture?

Mr. PATRICK. To answer your question very directly, Senator, the official position of the Commission as we speak is that we find no need to intervene into the marketplace now.

However, because there were a sufficient number of concerns, the Commission did agree to monitor in the next year the evolution of the delivery of programming to home dishes very carefully. The staff is going to be reporting the results of those monitoring efforts both to the Commission and to NTIA and at the end of that period we are going to report those results to Congress.

Senator EXON. Is it true, Mr. Patrick, that the cost of the descrambler remains relatively high and higher than we had been led to believe in earlier testimony? And is it not true that the production of those descrambling devices are at a much slower pace than had been earlier anticipated by the FCC?

Mr. PATRICK. Let me call upon the chief of the office of plans and policy here because he headed our effort to investigate this particular area and he has those details on hand.

Although I would comment just very generally, however, that my understanding is that the cost of the Videocypher II descrambler, which seems to be the standard which has been adopted by the marketplace for descrambling, is about or was about, at the time of the report, $395.

which strikes me as reasonably expensive, but maybe not when compared to the cost of the dish.

There was also some indication that the cost of that descrambling mechanism would come down in the relative near term. So we were encouraged by that.

But that goes to your specific comment about the descrambling mechanism and if Peter wants to add something to that, feel free.

Mr. PITSCH. Senator, the initial price was $395. There is a hope that, as a module can be developed and put into the home dish satellite, that incremental price will fall dramatically on the order of about $150. When the Home Box Office network was first considering the Videocypher system the opening price that the manufacturer came in with was in fact $3,500, and they reduced the sophistication of the system to bring that price down substantially.

As to the capacity point, there have been some irregularities in the amount demanded by dish owners over time. But there is substantial capacity in place and while some distributors occasionally run out of them, they are always available on a five-day lag period using an 800 number and at this point it is our understanding that there is substantial capacity available.

Lastly, as to the price, it is important to point out that if people want to they can buy packages of services which allow them to get the decoder for no additional price, if they buy a three-year commitment. For example, for a basic service plus one or two premium services, they can get the decoder for no additional price.

Senator EXON. Well, in other words, that is kind of a come-on. If you will pay me everything that I want for the total package, which could double your annual monthly charge, then we will be good enough to sell you a decoder for $400.

Are you telling me that you are satisfied? I do not know whether you are right or wrong. I am getting information that the production of that decoder, the $400 decoder, has been lagging and that they are not readily available. Are you saying that is not the case?

Mr. PITSCH. I do not believe it is, sir. We are continuing the monitoring process and we were aware of some distribution problems at the retail level. But as I say, they were available through the use of an 800 number.

Senator EXON. The President as you know proposes as a part of the fiscal year 1988 budget to auction off non-mass media spectrum.

Some of our smaller entities, such as rural telephone co-ops, could hardly afford to compete in an auction, it seems to me. Particularly when such large entities such as AT&T and so forth are involved. Is that not a concern of you and the Commission?

Mr. PATRICK. Certainly when you talk spectrum auctions, the Commission is concerned about the parties that could effectively participate in that sort of process. However, I might point out, Senator, that we are not proposing that any cellular Spectrum be auctioned at this time.

Senator EXON. Thank you, Mr. Chairman.

Senator INOUYE. Last Thursday the Commission adopted new restrictions on the broadcast of obscene and offensive material and warned radio and TV stations that they risked the loss of their licenses or fines if they broadcast sexually explicit language or song lyrics. Now this comes after 11 years of hands-off policy on this so-called indecency broadcast and relies upon the seven famous words.

What made it necessary for you to adopt this new policy? The seven words were not sufficient?

Mr. PATRICK. Mr. Chairman, the Commission made a decision, or made a series of decisions, last week wherein we decided to apply the definition of indecency that was affirmed by the Supreme Court in the *Pacifica* decision and no longer restrict our interpretation of indecency to the particular so-called seven dirty words that were at issue in the Carlin monologue, which gave rise to that litigation.

How it is that a Commission that is very much oriented towards deregulation could take that position is simple. The Congress passed a statute, Section 1464 of the Criminal Code, which prohibits the broadcast of obscene and indecent speech. The Congress also gave the FCC enforcement responsibilities with respect to Section 1464.

The issue before the Commission was how to effectively fulfill those responsibilities. I think bottom line the Commission simply made a judgment that the position that indecency can be or should be defined as only seven particular words was untenable and not realistic. And that was especially the case in light of the type of programming that we were seeing as the subject of complaints before the Commission in the past six months or a year.

Senator INOUYE. What has been the response?

Mr. PATRICK. First of all, I should say I have no way of engaging any broad survey of the response. The response that I have personally become aware of from the public is generally very supportive.

Senator INOUYE. I am talking about the DJs, the disc jockeys.

Mr. PATRICK. That is a different story. There has been some criticism leveled at the Commission from the broadcast community and from the shock jocks in particular, with respect to this decision.

Senator INOUYE. Are they adhering to your restrictions?

Mr. PATRICK. I think it is a little early to say. I personally have not, well in fact do not, listen to those particular programs. So I have no way of knowing in the past couple of days.

The Commission, as you may know, as a procedural matter, issued warnings to those particular stations that were at issue last week, precisely because we understood that we were changing the precedent with respect to our application of Section 1464.

Senator INOUYE. Are you prepared to carry out the sanctions?

Mr. PATRICK. If there is a violation of the clarified standard, as articulated by the Commission, yes. I think it will be the Commission's obligation to enforce section 1464.

Senator INOUYE. I gather that one of the disc jockeys in the Philadelphia-New York area has indicated that he has no intentions to change his format. Are you ready to close him up?

Mr. PATRICK. I think that particular matter, Mr. Chairman, is pending before the Commission. So I probably should not comment, if you will excuse me.

Senator INOUYE. I have several other questions here, which I would like to submit to you for your considerations and response.

But before I do, without objection, questions submitted by Senator Lawton Chiles and Senator Hollings will be made a part of the record. I hope you will also look at those questions and provide us with responses, sir.

Senator Danforth?

Senator DANFORTH. Mr. Chairman, let me apologize for not being here, but we have had a bill on the floor and Chairman Patrick, I am sorry I was not here to hear your testimony.

What is the latest status on the must-carry issue?

Mr. PATRICK. The Commission has voted that item on reconsideration and we expect it to be released next week.

Senator DANFORTH. You have taken a vote but you have not announced what the vote is?

Mr. PATRICK. We have taken a vote and we have announced what that vote is at the Commission meeting. Of course, it was a public meeting. The Commission voted the item and the item as edited will be released next week.

It is now merely being circulated among the commissioners for final edits. But the item was voted in substance at a Commission meeting and will be released.

Senator DANFORTH. So that is public knowledge?

Mr. PATRICK. The broad parameters of the decision are public knowledge, that is correct, Senator.

Senator DANFORTH. And could you enlighten me? I was in Missouri during this vote. What was the substance of it?

Mr. PATRICK. As you know this is a very complicated rule and it has many facets. But let me see if I can hit the highlights for you.

The Commission ordered that there will be some must-carry obligation among all cable systems. A cable system having less than or equal to 20 useable, activated channels has an obligation to carry at least one public station if available.

There are requirements that range, depending upon the channel capacity of the system, up until the time you reach a 30 channel system. Any system with equal to or greater than 30 channels has an obligation to carry must-carry signals to the extent of 25 percent of its channel capacity.

With respect to non-commercial stations, we provided for a number of special exceptions to encourage carriage. And I must say in this regard that your letter was instrumental in the Commission's consideration of the action that would be appropriate to take with respect to public stations, because as you will recall, Senator, the original industry compromise as submitted did not provide any exceptions for new stations or public stations, which we found to be inappropriate and which you seemed to suggest as well in your letter.

With respect to public stations, there is an obligation among all cable systems to carry public stations if available. Systems of less than 54 channels must carry one qualified public station. If the channel capacity is 54 channels or greater the system must carry two qualified public stations.

There is a 2 percent 5 percent share, or I should say 2 percent share 5 percent net weekly circulation criterion as a threshold to qualify for carriage, if you are a commercial station. We waive that criterion with respect to public stations.

There is no requirement that a system carry duplicating commercial networks. We did not provide that exception for public stations, which is to say that a duplicating public network station would still qualify as a must-carry station.

The Commission provided for certain educational requirements, or I should say informational requirements, that must be fulfilled by the cable system. Basically what we required is that the cable system inform subscribers of, in effect, the must-carry rules. The fact that, for a period of five years there is an obligation to carry some but potentially not all of the——

Senator DANFORTH. Can I interrupt you? You did provide for a sunset period? Is that right?

Mr. PATRICK. That is correct. There is a five year sunset.

Senator DANFORTH. Why?

Mr. PATRICK. The Commission felt that a sunset of the rules was necessary for at least two reasons. The first is in order to comply with the constitutional parameters set forth in *Quincy*.

As you know, Senator, in the *Quincy* decision the Supreme Court held that our must-carry rules were unconstitutional. The Court further held that if the Commission is to provide for rules that restrain cable speech and interfere with the first amendment rights of cable. Those rules must be necessary to serve a compelling state interest.

And the Court went on to say that an impact on any particular broadcaster probably would not be the sort of compelling state interest that would be necessary. Rather, the Court was looking for a broader, more generic impact on broadcasting.

The Commission found that permanent must-carry rules would not be necessary in the long run for the reason that in the long run, cable subscribers will be able to obtain access to over-the-air signals by use of a very simple technology, sometimes referred to as the A B switch, but more generally called input selection devices, which are now built into many television sets.

That was number one, compliance with the constitutional parameters. I might just add on that side of the question that the bottom line is that the record simply did not support any need for permanent must-carry. There was no record evidence to show that, but for must-carry, that broadcasting would be substantially threatened in the long run. And the reason for that is that even after you are wired for cable one can access signals over the air. So we felt it was necessary to sunset the rules after five years.

The second, and this is equally important, reason that the Commission felt that a sunset was appropriate, goes to a public interest criterion. Our bottom line obligation is to ensure that we maximize the public interest.

This Commission believes that the public is going to be best off in the long run if they have alternative mechanisms for the delivery of video product, rather than having a situation in which we would have all video product delivered through a single line, as it were, the cable line.

So we think certain informational requirements, which the cable system has to meet, in combination with offering A B switches to all subscribers, will put the public in the long run in a position where they are going to have maximum diversity, maximum exposure to alternative delivery mechanisms and product.

For those two reasons, constitutional and public interest, we thought a sunset was necessary.

Senator DANFORTH. Let me express my doubt on the sunsetting feature. Tell me your views, if you would, Mr. Chairman, on the role of the FCC relating to telecommunications trade?

Mr. PATRICK. Senator, as you know, we have a notice of inquiry outstanding right now with respect to the impact of foreign trade practices on consumers of the telecommunication products in the United States, as well as telecommunication concerns. This inquiry also makes inquiry into the question of appropriate sanctions, or the appropriate role for the Commission in this trade area.

The second part of the notice proposes rules with respect to ways in which the Commission could solicit and secure information on foreign participation in U.S. markets.

I have not been participating heavily in the international area at the Commission heretofore, and I would look forward to the comments that we receive in response to this NOI before making any judgments as to the proper role for the Commission. It is certainly an important area. It is an area with respect to which we would expect to work very closely with the Congress and the Administration.

Senator DANFORTH. It is my hope that we can include in whatever trade bill we are going to pass in the Senate a telecommunications trade provision. I think this should have been done several years ago.

My view is that the effect of divestiture was identical to a unilateral trade concession. In other words, the Bell operating companies are now able to buy equipment from whatever source. At the same time other markets are generally closed to what the United States produces.

Therefore, it is a one-way situation with respect to the purchase of this equipment. I really think that we need some leverage, or else we are never going to get into markets. Once you make a unilateral concession and get nothing in response to that concession, the result is you have had it, unless there is some way that we can create some leverage; and that is exactly what the Telecommunications Trade Act is all about.

It would be my hope that provision or something like it would be included in the trade legislation which will be marked up beginning tomorrow in the Senate Finance Committee.

So if the Commission has any ideas on the subject, we would welcome those ideas at the earliest convenience.

Mr. PATRICK. We will certainly provide it, Senator. Thank you.

Senator DANFORTH. Thank you, Mr. Chairman.

Senator INOUYE. Thank you. Senator Kerry.

Senator KERRY. Mr. Chairman, thank you. I know you are just about to wrap this up. I have very few questions, but if any of them have already been answered, just tell me and we will go back to the record and not take the Committee's time.

With respect to the line charge, the subscriber line charge increases, one of the major arguments that you have used with respect to that I think has been the issue of the bypass and the effort to avoid the bypass situation.

Have you conducted any kind of comprehensive study, or is there any documentation on that issue which demonstrates that that is a significant problem?

Mr. PATRICK. Senator kerry, in the Joint Board proceeding that led to the recommendation and finally the Commission action, extensive evidence was taken with respect to the bypass issue.

Senator KERRY. Was that submitted? I know in the House hearings that you had the bypass issue was raised, and I believe there was nothing put forward at that time at least.

Mr. PATRICK. Chairman Markey has asked if we could submit information that is specific as possible with respect to the bypass issue and with respect to bypass that is now occurring in various regions in the country, and has asked us to format it in a more comprehensible way. That certainly is a reasonable request because this data is a bit confusing.

Senator KERRY. So that will be submitted?

Mr. PATRICK. Yes.

Senator KERRY. Can you also make that available to us simultaneously?

Mr. PATRICK. Yes, Senator, we will do that. We agreed to provide this information to Chairman Markey by June 1st, and we will certainly provide that information to you as well.

Senator KERRY. Is there, among that evidence, evidence that clearly demonstrates that businesses who are considering bypass would in fact be discouraged by the long distance rate drop caused by the $1.50 subscriber line charge?

Mr. PATRICK. I don't know whether we have evidence that provides that degree of specificity. We think that the $2.00 subscriber line charge has had beneficial impact in terms of discouraging bypass.

We have seen, for instance, a diminution in the rate of increase in movement switched to special access, which of course is service bypass. So we do have that sort of empirical data that indicates that we are making some progress in the fight against bypass.

We also have——

Senator KERRY. But that progress, it is not attributable to subscriber line charge increase, is it?

Mr PATRICK. We think it is attributable to some extent to moving NTS cost out of per-minute carrier common line charges and back to the subscriber line charge. There is no way of pinpointing precisely all of the parameters that may affect that diminution in the rate of growth of special access, but we think that is one of the factors.

To answer your question more specifically, I think we have a great deal of empirical data. We have specific evidence with respect to—and maybe this goes more to your question—facilities and service bypass by various companies in, I believe, just about every region of the country. That is the type of data that Chairman Markey was interested in, and we are assembling that data right now.

As to asking a particular company and its executives how they would react to an additional increment of $1.50, I am not sure we have that data.

Senator KERRY. If one accepts that the bypass were a significant problem, you have to make the leap into the question of solution. I am wondering how empirically you can draw the connection between the $1.50 increase and the avoidance of bypass problem?

Mr. PATRICK. Empirically we can look at things such as a diminution in the rate of growth. We can look at the fact that at or about the time of the $2.00 subscriber line charge, GAO did a study in which they stated that about 53 percent of the large companies that they surveyed at that time had initiated or were planning to initiate bypass. We haven't seen that degree of bypass take place. We think that has something to do with the fact that we have sent the right signal with respect to subscriber line charges and with respect to moving some of these costs out of the per-minute carrier common line charge and into the subscriber line charge.

Your question is a very good question and it goes to the nexus. This is an imperfect science and we have to do the best we can. There is some intuitive arguments here that I think need to be taken into consideration. A company can sit down and compute how much they can save by moving out of switched access and into either special access facilities, or private facilities. That computation can be done. When the subsidy that is being carried in per-minute charges included only in switched access rates is so high relative to the cost of building bypass facilities, it is just intuitive that a number of entrepreneurs thinking about dollars and cents and the bottom line are going to be disposed to do it.

Senator KERRY. There are some, I guess, that dispute that. I would like to see that if I can.

How did the Federal/State Joint Board arrive at the $1.50 increase?

Mr. PATRICK. The first thing I might say, Senator, is that I am not a member of that particular Joint Board, so I can't give you chapter and verse with respect to that question.

I believe that, first, the Commission felt early on that moving even more in the way of dollars out of the carrier common line charge and into subscriber line charge recovery would be appropriate and beneficial. It is fair to say that there was some resistance to that proposition at the State level, and so there was discussion and negotiation as there always is in these matters.

I think that the $1.50, however, is not just a function of negotiation, but rather is, for one thing, that amount of additional increment with respect to subscriber line charge that would induce the degree of voluntary depooling among the large companies that was needed to make the depooling proposal fly, if you follow me there.

Senator KERRY. I was looking hard to being able to completely follow you there. That seems a little jumbled to me. I am still not sure that I understand completely the process of negotiation and this and that. I guess I am still left asking why $1.50, which is what a lot of people are asking?

Mr. PATRICK. Let me try again. Certainly my first point about negotiation and compromise is simply this; there is no precise way to compute the exact amount in the way of additional subscriber line charge increments appropriate here. There is going to be some discussion as to a range of numbers.

With respect to the de-pooling point, the subscriber line charge allows de-pooling in the sense that but for the additional $1.50 in subscriber line charges, the amount of these costs that a company that depooled would have to recover through its own individual carrier common line charge would be so high that, first of all, it would be indisposed to de-pool.

Secondly, from the perspective of the FCC, the variation in NTS costs that would be recovered by these individual depooled companies through the carrier common line charge would be so great that it might drive de-averaging. The Joint Board was concerned that it would be difficult for the interexchange carriers to sustain averaged rates when they have that much variation in the access charges being charged by these various local telephones companies.

So $1.50 became that number which was thought to allow for depooling and to alleviate our concerns with respect to de-averaging.

Senator KERRY. Let me digest that later on a little bit. I will try to digest it and I will get there at some point.

There is an argument made by a lot of people that for the residential users anywhere from one-half to two-thirds of them, particularly in the low and moderate income levels, that their usage on long distance lines is not so great as to make up the balance there. I am sure you have heard that argument.

Do you have any studies that in fact show that that difference will be made up?

Mr. PATRICK. Let me call upon the Chief of the Common Carrier Bureau that has looked at some of these numbers if I might, Senator.

Mr. **Halprin**. Senator Kerry, we are also preparing certain information on that, at least by region, at the request of Chairman Markey. We will be delighted to give it to you.

One thing we did have in the record when the Joint Board made its decision and the Commission made its decision, is that residential customers as a group are coming out ahead by ten percent, which is hundreds of millions of dollars a year, as a result of this decision.

Senator **Kerry**. When you say residential, how do you divide up those residential customers? I know that in the other hearing you were asked about the median versus the average, correct?

Mr. **Halprin**. Yes, sir.

Senator **Kerry**. I think you gave an answer with respect to the average. You haven't given an answer with respect to the median.

Mr. **Halprin**. We are gathering that information.

Senator **Kerry**. Which is more important, median or average? Which gives a better telltail of who is affected?

Mr. **Halprin**. Neither gives it entirely by itself, and the reason for that is even if it turns out that the median is exactly at 50 percent, a significant number of the people that were viewed as being worse off are worse off by two or three cents a month. It is not everybody who is worse off by $2.00 or $3.50, since 90 to 95 percent of residential consumers make long distance calls in a year.

So they are getting some benefit from this program. In weighing the protection of the public telephone network against the realization that you can't make every single individual better off, both the average and the median seem relevant, sir.

Senator **Inouye**. Will the Senator yield at that point?

Senator **Kerry**. Absolutely.

Senator **Inouye**. Just prior to your joining us Senator Gore of Tennessee indicated that in studies conducted by his state anywhere from 40 to 60 percent of home subscribers, residential subscribers, do not make long distance calls.

As the Chairman, in response to questions indicated, these are the people who are going to pay extra.

Senator **Kerry**. This is precisely my concern, Mr. Chairman, and I think what a lot of people are getting at is depending on how you break it down, those who make the calls, or those who have the ability to, may wind up showing up what the return is. For those who can't or don't or have less income, they are going to wind up paying more.

Senator **Inouye**. I think you and I may benefit because we do a lot of long distance calling.

Senator **Kerry**. We may have a special contract for that, Mr. Chairman. So we benefit twice, I guess, which is not unheard of around here.

You are going to submit the median. I suppose parenthetically I might suggest it is interesting to me that this decision was able to be made without that information in front of you. If we can get at it in the long run, I suppose that is helpful.

On one other subject area very quickly, and, Mr. Chairman, thank you for your indulgence. With respect to the question of the antitrafficking law and a possible three year holding period or some holding period et cetera, you have been quoted as saying you oppose the reimposition of that.

There are those who argue that the trading in stations like other corporate assets is obviously having an impact on public service, on the quality of news, and other kinds of things.

If not a three year holding rule, is there some other way to deal with that, or don't you share the concern that churning, as it is referred to, and other things that are taking place as having a negative impact?

Mr. PATRICK. Senator, that is obviously a very good question. It is a topic at great debate at the present time. It is an issue with respect to which I think reasonable minds differ. I will give you my own view.

My own view is that broadcasters can't have it both ways, and the Commission in our approach to regulation can't have it both ways. We have moved away from detailed regulation of the manner in which broadcasters go about fulfilling their very important functions, and we have done it upon the assumption that competition in the marketplace would supplant that regulatory structure, which is to say that the incentives to provide the sort of news, information, and programming that people want to see and hear would be there as a result of the competitive process. We have, for the most part, a very competitive marketplace out there.

Part of that marketplace, part of precisely that which creates those incentives, involves the process of buying and selling broadcast properties.

I think I don't see that as necessarily bad in general. More specifically, with respect to the three year rule, my own feeling is that it would seem that a willing buyer is going to be more disposed to serve the public interest than a reluctant seller, or reluctant holder of the property who can't sell the property if he is disposed to do so, number one.

Number two, I am not sure the rule is really necessary. Since 1982 when we abolished the rule, 75 percent of the stations, and I include in that number both radio and television, have been held longer than three years.

I also think that the three year rule, and I am told by especially small broadcasters and some minority entrepreneurs, acts as a barrier to entry in the sense that when these people go to the bank, if they are required to hold that property for three years and something goes wrong and they can't get out, that is a risky loan for the bank and they are going to be less disposed to make such a loan to a broadcaster without a track record.

Senator KERRY. But you could certainly treat, particularly the minority concern, in a separate category. I think we are more concerned about the acquisition-mania and leveraged buyout and those kinds of treatment of this which have an effect on the ability to serve the public interest.

I take it you disagree with the assessment of Mr. McCabe, formally with the CBS News that it has had a negative impact on quality of news production and general public service programming?

Mr. PATRICK. We have seen no evidence of that. People draw different personal judgments, but we have seen no evidence of that.

Senator KERRY. I don't want to get into a restrictive ability to trade an asset, but since this is an asset somewhat in the public domain the question is whether there is some reasonable structure that might diminish the prospecting that takes place which can harm the public interest—according to some opinions. Maybe the evidence isn't all in, but would you be open to some consideration of something like that in the year and a half that you may have left to think about it?

Mr. PATRICK. First of all, it is difficult for the Commission and I think the Commission is indisposed to make judgments about quality, but with that caveat I would try to answer your question by saying that if there were a material diminution or degradation of service by broadcasters to their broadcast communities, I am sure the Commission would be concerned.

Senator KERRY. Do you feel that the elimination of the anti-trafficking rule has led to the increased flipping of stations?

Mr. PATRICK. I think that it is probably one piece of a larger puzzle that has led to increased activity with respect to broadcast properties.

I would say it is probably a fairly minor piece. I think the largest aspect, or the largest reason for the increase in activity is the fact that broadcast properties have been enormously, or were enormously undervalued for a number of years, and I think Wall Street discovered them.

Senator KERRY. Do you think that the power of the three networks to award affiliation contracts to local television stations gives them a substantial economic weapon? In other words, that the networks can leverage when trying to buy stations, particularly since you have a new breed of investor now in this market?

Mr. PATRICK. I am not sure whether it gives them a weapon. I think it is an empirical fact that network affiliates are valued more highly in the marketplace than independent stations. I am not sure that is bad.

Senator KERRY. If networks are allowed to buy other than their own affiliates as in Miami, does that open up the floodgates to network predation of any market with four VHF signals?

Mr. PATRICK. Senator, I am going to try to answer your question by saying that the issue of the networks' acquisition of properties in a market where they also have an affiliate is a matter of concern to the Commission, and we have an ex parte matter pending before us involving NBC that enages precisely that issue. So I shouldn't comment other than to say——

Senator KERRY. That is why I asked the question without any specific names, but in general terms. Does it open up the floodgate in general terms if networks can do that?

Mr. PATRICK. I am afraid, Senator, I can't comment on that because we only have one of those cases before us.

Senator KERRY. I am trying to keep it down to one.

Mr. PATRICK. I am not sure we can accomplish that here today. It is a matter of concern and it is something that we are looking at. Diversity in the local marketplace is a concern.

Senator KERRY. I appreciate that. Thank you for your answers. Thank you, Mr. Chairman, for your time.

Senator INOUYE. Thank you very much. Mr. Chairman, the Committee would appreciate it if you could provide us with responses to the submitted questions by May 1st.

Mr. PATRICK. We would be glad to, Mr. Chairman.

Senator INOUYE. This is your first meeting with us and I must say that your obvious knowledge and familiarity with the areas of concern of your Commission are most impressive. I congratulate you on your preparation and your ready responses. I as chairman of this subcommittee look forward to working with you in this complex maze, and we hope that we can come out with something that makes sense.

Congratulations on your appointment. We look forward to working with you.

Mr. PATRICK. Thank you, Mr. Chairman.

Senator INOUYE. The subcommittee is adjourned.

[Whereupon, at 4:35 o'clock p.m., the meeting was adjourned.]

[The following information was subsequently received for the record:]

Federal Communications Commission,
Washington, DC, May 1, 1987.

Hon. Daniel K. Inouye,
Chairman, Senate Subcommittee on Communications, Washington, DC.

Dear Mr. Chairman: I am pleased to provide responses to follow-up questions we received after the April 21 hearing on the Commission's re-authorization for FY 1988 and 1989.

I hope this information is responsive to the Members' questions. If you need any additional information to complete the hearing record, please contact us.

I also look forward to working with you to achieve communications policy that best serves the interests of the American public.

Sincerely,

Dennis R. Patrick,
Chairman.

Enclosure.

Questions From the Chairman

Question 1. While the Commission has been increasing the subscriber line charge, the interstate NTS revenue requirement has also been increasing. What will be the effect of this growing revenue requirement on the need for future increases in the subscriber line charge?

Answer. The increases in subscriber line charges recently recommended by the Joint Board and adopted by the Commission are intended as the final step in the implementation of subscriber line charges. Based on the current telecommunications environment, we fully expect that the Commission will be able to maintain the subscriber line charge cap at $3.50 for these subscribers, in large part, because switched access usage is presently growing at a substantially faster rate than NTS costs. As a result, the local exchange carriers should be able to recover anticipated increases in NTS costs without increases in the per minute carrier common line charge for switched access.

Question 2. With the implementation of the subscriber line charge, long distance rates should decrease. The problem is that the rates for the various long distance services have not decreased equally. In other words, what should have been a simple "pass through" of decreased costs has become an opportunity for major tariff changes with small business and residential users receiving relatively small reductions. Why hasn't the Commission spread the reductions evenly? What are the Commission's plans for future long distance rate deductions? Is the Commission considering applying its "net revenue test" to the reduction in rates for traditional long distance services?

Answer. This Commission's long-standing policy has been to ensure that each dollar of savings AT&T realizes as a result of subscriber line charge implementation is flowed through to consumers in the form of interstate toll rate reductions. I am committed to ensuring that future flow-throughs are implemented in an equitable fashion.

It is possible that a strict, across-the-board rate cut in every rate period may not be the most equitable method of implementing this flow-through in all circumstances. Across-the-board reductions are insensitive to the price/revenue relationship, or "margin," of a given sevice or rate period. AT&T has informed the Commission that, prior to June 1986, its margin during the day rate period historically had been more than twice as high as its evening margin, and almost three times as high as its night/weekend margin. Therefore, implementing all rate reductions on an across-the-board basis could, over time, result in the provision of certain services during particular rate periods at below-cost prices, an activity that would raise substantial anti-competitive concerns.

In the June, 1986 flow-through stemming from the increase from $1.00 to $2.00 in residential and single-line business subscriber line charges, the largest portion of AT&T's $1.85 billion rate reductions were concentrated in the day rate period, while smaller percentage reductions were implemented in the evening and night/weekend rate periods. As residential customers account for nearly half of all traffic in the day rate period, this flow-through format assured that residential customers would receive substantial savings. Although we permitted a non-uniform flow-through filing to take effect in June 1986, we share your concerns regarding the structure of the flow-through of the long distance rate reductions generated by the $0.60 increase in residential and single-line business subscriber line charges scheduled for July 1987, and therefore intend to assure a uniform flow-through of these rate reductions.

In recent weeks the Commission has received inquiries seeking information concerning the relative benefits residential and business customers have realized as a result of previous AT&T flow-through tariff revisions, as well as estimates of what benefits residential customers would have realized if previous flow-throughs had been implemented on an across-the-board basis. At the request of the Common Carrier Bureau, AT&T provided this information, which is enclosed. AT&T's calculations show that residential customers' interstate long distance bills were reduced by 19.5% as a result of AT&T's June 1, 1986 and January 1, 1987 rate reductions, and that business customers' bills were reduced by 18.1% as a result of these reductions. The size of the reduction for residential customers is due to the fact that they realize a large portion of the savings in the day rate period and the vast majority of reductions in the evening and night/weekend rate periods. AT&T states, moreover, that if the reductions had been implemented across-the-board, residential customers would have paid an average per-minute MTS rate of $0.188, or $0.004 less per minute than the actual average per-minute rate of $0.192.

Finally, the Commission evaluates all proposed revisions to AT&T's traditional long distance services on the basis of a fully distributed cost (FDC) standard. We will apply this standard to AT&T's scheduled May 15, 1987 flow-through filing.

Question 3. The Commission's Third Computer Inquiry decision is premised on two policies: the establishment of open network architecture to permit non-discriminatory interconnection and the creation of an accounting scheme to allocate joint costs. Neither of these policies has been tested. In fact, it is not clear how well either has been defined. Why has the Commission placed such great faith in uncertain policies? What are your plans for ensuring the success of these policies? Does the Commission believe it has sufficient resources to implement these policies, particularly the accounting rules?

Answer. The Commission's reliance on Open Network Architecture and the other nonstructural safeguards of the *Computer III* decision is based on a number of factors. First, the detailed, voluminous record in that proceeding convinced us that such safeguards could operate effectively, given the post-divestiture structure of the industry. Second, experience with ONA-type regulations and other safeguards gained from earlier waiver proceedings, such as for asynchronous/x.25 and x.25/x.75 protocol conversions and for certain central office based alarm services, lead us to conclude that this approach is workable. For example, the Commission has successfully applied ONA-type requirements on the BOCs' offerings of certain kinds of packet switched data services. Third, we concluded that a conservative approach to introducing and approving the BOC's implementation of these safeguards would allow ample opportunity to resolve any difficulties in implementing the new safeguards.

The existing separate subsidiary rules will generally remain in effect for AT&T and the BOCs until the Commission has approved each carrier's plans for Open Network Architecture and the cost allocation safeguards and the carrier has implemented the safeguards. The carriers may, however, file interim Comparably Efficient Interconnect (CEI) plans and cost allocation plans for specific services before the implementation of ONA. If such CEI plans are approved, the specific services that they address can be offered without structural separation. The carrier's plans will be subjected to public comment and careful staff review before the Commission acts on them.

We believe that we have sufficient resources to implement these safeguards. Implementation of the cost allocation procedures will, in fact, result in more auditing of the subject carriers than is the case at present. Many of these audits will be performed by independent auditors, and the FCC staff will review the results of these audits to identify potential problem areas. We believe that this approach will greatly increase the efficiency of our auditing efforts. In addition, the Bureau is in the process of establishing a comprehensive automated reporting system for regulated carrier financial and accounting data. This information will be independently reviewed by the Commission staff as well.

Question 4. In submitting plans for the marketing of customer premises equipment, many of the local Bell telephone companies have decided to maintain separate subsidiaries, at least for some of their activities. The Commission has stated that separate subsidiaries greatly increase operating costs. If this is the case, why do you believe the local telephone companies wish to retain them?

Answer. In eliminating the structural separation requirements for BOC provision of customer premises equipment, it was our intention to allow the BOCs to organize their CPE and network operations in the most efficient way to satisfy their customers' needs. We did not impose particular organizational requirements on the BOCs, but rather, recognizing that different BOCs would prefer different organizational structures, wished to give each BOC the flexibility to determine the best way to organize its operations.

While certain BOCs have indicated that they may maintain some degree of separation between their CPE and network operations, none of the BOCs has indicated that it will maintain complete *Computer II* structural separation, as we required before. At the very least, all of the BOCs will engage in joint marketing activities, which were not permitted under the *Computer II* separate subsidiary rules except through a difficult and lengthy waiver process. Indeed, all of the BOCs have filed the compliance plans necessary to obtain full structural relief. Those that have chosen to retain some form of separation in the short term have stated their intention to implement further integration of their CPE and network operations in the future.

In our view, the current differences among the BOCs in the long organization of their operations confirms our conclusion in the *BOC CPE Relief Order* that a flexible regulatory approach to BOC CPE operations best serves the public interest.

Question 5. The Commission is now considering lessening regulation for the provision of certain services by dominant common carriers. In the past, the Commission has focused more on the facilities of the carriers as the key determinant of market power. Why has the Commission shifted its focus?

Answer. The Commission has not greatly shifted its focus in considering whether to lessen regulation of certain services provided by dominant carriers. In its earlier *Competitive Carrier* proceedings, the Commission reduced regulation of, or forebore from regulating "nondominant" carriers (that is, those carriers without market power in very broadly defined markets) and continued to regulate dominant carriers (for example, AT&T the BOCs, and the independent telephone companies). In the current proceeding in CC Docket No. 86-421, the Commission is examining whether dominant carriers offer some specific services that are subject to competition to such an extent that, with respect to those particular services, the carrier does not have market power. For services where market power does not exist, we have proposed reduced regulation. For purposes of this proceeding, the Commission has proposed to measure market power for the services at issue by examining a carrier's market share, the rate of change of its market share, and the barriers to entry in the relevant market.

While the Commission has, as indicated above, proposed certain changes in the regulation of competitive basic services offered by dominant carriers, a final decision on these matters has not been made. Our future actions in this area will be based on a careful analysis of the record compiled in this proceeding.

Question 6. What type of studies will the Commission conduct prior to altering regulation of dominant common carriers?

Answer. The Commission will conduct full notice-and-comment rulemaking proceedings pursuant to the Administrative Procedure Act before considering whether to alter regulation of dominant carriers. For instance, it has begun such a rulemaking in CC Docket No. 86-421, discussed above, and has received over 90 pleadings in that proceeding to date. In addition, the Commission staff is reviewing the experience in this area of the states and foreign countries, as well as the academic literature on this topic.

Question. There has been much discussion about the replacement of rate of return regulation with a "price ceiling" approach. Have you considered an approach that would have a "price ceiling" for residential rates and a "price floor" for business rates so as to protect against improper cross-subsidization?

Answer. No formal inquiry into the possibility or desirability of replacing rate of return regulation with a price ceiling approach has yet been undertaken. In the informal discussions that have so far taken place, one of the possible advantages of the price cap approach that has been frequently cited is its ability to discourage cross subsidization. Under rate of return regulation, the regulated firm may possess incentives to make it appear that profits earned in regulated activities were earned in unregulated ones. It may attempt to do this either by charging costs of unregulated activities to the regulated ones or by crediting revenues earned by regulated activities to the unregulated ones. This kind of activity is difficult and costly to police.

Under a price cap approach, incentives to cross subsidize are limited because profit shifting does not permit the firm to raise its capped prices. Under rate of return regulation, profit shifting may permit higher profits to be earned. Under price caps, there is no payoff to profit shifting activities and, therefore, presumably no incentive to undertake them. While there has been no formal proposal as yet, in preliminary discussions a variety of different price floors and ceilings have been considered including the cost standards for fair competition embodied in the antitrust laws.

AT&T,
Basking Ridge, NJ, April 27, 1987.

Mr. ALBERT HALPRIN,
Chief, Common Carrier Bureau, Federal Communications Commission, Washington, DC.

DEAR MR. HALPRIN: You and your staff have asked us for information about the distribution of AT&T's June 1, 1986 and January 1, 1987 rate decreases in response to questions raised at the April 2, 1987 hearings of the House Subcommittee on Telecommunications.

Residence customers' interstate long distance bills were reduced by 19.5% as the combined effect of the two rate reductions. Business customers' interstate switched services bills were reduced by slightly less, 18.1%.

The 19.5% residence reduction is a weighted average that reflects how residence usage is distributed over the day, evening, and night/weekend rate periods. Residence customers receive much of the benefit of reductions in daytime rates (because they generate nearly half (47%) of daytime traffic) as well as the vast majority of the benefit of reductions in the discounted rate periods. Business customers' reductions are slightly smaller because 80% of business switched service traffic is for WATS, 800 Service, and other services that received smaller price cuts than MTS, which accounts for all 100% of residence traffic. The attached table provides some further detail.

You asked specifically what the difference would have been if the MTS changes had been across-the-board with regard to time of day and initial and additional minute rates. AT&T's residence customers pay an average of $0.192 per minute for long distance service. If the total MTS reduction had been the same but the June, 1986 and January, 1987 changes had been across-the-board, residence customers would have paid $0.188 per minute, or $0.004 less per minute than the actual $.192 rate.

Sincerely,

D.J. CULKIN,
Corporate Vice President.

QUESTIONS FROM SENATOR INOUYE

Question 1. Last week, the Commission adopted a new access charge plan. Does the Commission intend to revisit this plan and make significant alterations?

Answer. The Commission does not intend at this time to make any significant alterations to its recent decision concerning access charges. The Joint Board recommended, and the Commission recently adopted, measures concerning: (1) subscriber line charges for residential and single line business subscribers; (2) expanded lifeline assistance for low income households; (3) changes in the assistance for high cost telephone companies; and (4) modifications to the procedures for pooling interstate NTS or "common line" costs. The Commission believes that these measures represent an integrated and carefully balanced package which will produce substantial public interest benefits. We believe that significant changes in any single element of the plan would require modifications in other areas as well, and undermine achievement of our four basic goals in this proceeding—promotion of universal service and economic efficiency, reduction of service pricing discrimination and alleviation of the pressures for bypass. The expanded monitoring efforts accompanying these changes will assure that the plan produces the desired results. However, should any parties seek reconsideration of the Commission's decision, the issues raised will be evaluated based on the relevant record.

Question 2. The new access charge plan provides for an increase of $1.50 in the residential and single-line business subscriber line charge. Why do you believe this increase is justified? More specifically, why increase the subscriber line charge when there has been no use of the mechanism in the old access charge plan that permitted a $.70 increase in this charge?

Answer. The Commission has adopted a carefully integrated plan of action for resolving a variety of difficult issues related to common line cost recovery that have been studied and debated for many years, but left unresolved. This plan is designed to further all four of the long standing goals of the Commission's access charge proceeding—preserving universal service, promoting economic efficiency, eliminating service pricing discrimination, and deterring uneconomic bypass—and to achieve a proper balance among these goals.

Adoption of this integrated plan, particularly the proposed $1.50 increase in residential and single-line business subscriber line charges, represents a significant step toward the achievement of cost-based telecommunications pricing. Such pricing is well worth achieving because a pricing structure in which most non-traffic-sensitive, common line costs are recovered through usage-based charges, as is the cast today, poses a substantial danger to the long term viability of our Nation's telecommunication system. Artificially high telecommunications service pricing encourages a wide range of activity directed toward no other end than the avoidance of such prices. This not only diverts investment away from productive enterprise, it increases the possibility that users, particularly large users, will abandon the public switched network for less efficient alternatives that are less costly only because switched access services are offered at artificially high price levels.

When this Commission adopted the access charge plan in 1983, it expressed the belief that movement toward cost-based pricing, including implementation of subscriber line charges, would produce significant, tangible benefits for large and small telecommunications customers and for the nation as a whole. The Joint Board's study of data concerning the impact of the existing $2.00 subscriber line charge confirms this belief. Part of these data—a study prepared by Wharton Econometrics and funded by AT&T—state that the $2.00 charge has increased the Gross National Product by $6 billion, contributed to the creation of 10,000 new jobs, reduced overall price levels by 0.1 percent, and reduced the federal deficit by $1.9 billion. While some may challenge the precision of these data, the trends they indicate are consistent with our experience and confirmed by a study by this Commission's Office of Plans and Policy, which also is part of the record in the Joint Board proceeding, concluding that each dollar of the current subscriber line charge produces $1.30 in benefits, and that these benefits will continue to grow. These benefits have been reflected in the approximately 30% reduction in interstate long distance rates that has been achieved since the 1984 implementation of subscriber line charges. Equally important, all of these benefits have been achieved without any countervailing negative impact on universal service. Telephone subscribership nationwide has increased since implementation of subscriber line charges, and the number of households without telephone service has declined.

The Joint Board concluded, and this Commission agrees, that further increases in subscriber line charges will produce additional benefits, including efficiency gains, reduced bypass incentives, and decreased service price administration. Moreover, without the $1.50 subscriber line charge increase, it is not possible to secure major benefits attributable to other components of the intergrated plan recommended by the Joint Board and adopted by the Commission. This is particularly true with regard to portions of the plan concerning modifications to the current system of common line pooling.

This Commission currently requires all telephone companies to participate in a common line cost and revenue pool administered by the National Exchange Carrier Association (NECA). The Commission and the Joint Board agree that implementation of an additional $1.50 increase in residential and single-line business subscriber line charges will create an opportunity to modify this system in a manner that preserves the current benefits of the system and secures additional benefits for ratepayers and telephone companies.

Specifically, pooling modifications will operate to ensure the continuation of the two primary benefits of the current system: (1) the nationwide averaging of long distance rates by AT&T, which shields rural subscribers and others served by high-cost telephone companies from inordinately high common line cost recovery burdens; and (2) the provision to small telephone companies by NECA of administrative support in connection with the filing of interstate access tariffs, as well as the near assurance of a steady interstate rate of return that results from the risk sharing aspects of pooling. At the same time, these modifications will provide telephone companies that withdraw from the NECA common line pool with greater incentives to reduce costs and increase the economically efficient use of their networks. The modifications also will provide many such companies an opportunity to reduce the threat of uneconomic bypass in their study areas.

The Commission believes that the $1.50 increase in subscriber line charges is needed to permit sufficient numbers of local exchange carriers with loop costs higher than the national average to withdraw from the current pooling arrangement without exacerbating the threat of uneconomic bypass in their study areas or threatening the continuation of nationwide averaging of long distance rates by AT&T. The decision that a $1.50 increase is the minimum needed to implement pooling modifications successfully is based upon a blend of mathematical calculations and the judgment and expertise of this Commission. This judgment is buttressed by the views expressed by local telephone companies whose withdrawal from the NECA pool is critical to the success of the pooling modifications. The position expressed in the attached letter from GTE is representative of the views expressed by other companies.

Finally, this Commission's Rules currently provide a procedure pursuant to which local telephone companies may seek a $0.35 increase in subscriber line charges in order to combat localized bypass problems. Although the Commission indicated in 1984 that the Joint Board might initiate proceedings to increase this $0.35 surcharge in conjunction with the June 1986 implementation of the second dollar of subscriber line charge recovery, these proceedings were never instituted and the surcharge remained at $0.35. Many companies believe that the additional $0.35 increase available through that mechanism does not justify the additional administrative and billing costs involved in implementing a localized bypass measure. Rather than pursue such relief, the entire local telephone industry supported the more comprehensive Unity 1-A proposal, one component of which called for an increase in subscriber line charge recovery to $4.00 per month from residential and single-line business subscribers. Moreover, other local telephone companies, such as the Illinois local telephone companies and the Rochester Telephone Company, proposed plans to increase such charges to approximately $3.50 in their study areas, an amount that represents the full interstate loop cost allocation in such areas.

Question 3. The Commission continues to justify the increase in the subscriber line charge by referring to the potential for bypass; yet, the Commission still has not completed a study "quantifying the actual threat of bypass." When should the Congress expect the completion of such a study? Does the Commission still hold to the "death spiral" theory about bypass, that is without increases in the subscriber line charge, business users will leave the basic telephone network causing residential users to shoulder the cost burden of the entire system.

Answer. The Commission agrees with the Joint Board's conclusion that the prevention of bypass is one of several reasons why increased subscriber line charges are necessary. This conclusion is based on the extensive record compiled before the Joint Board as well as other information available to the Joint Board and the Commission. The Commission has also completed several studies on the issue of bypass. The most comprehensive, Bypass of the Public Switched Network, was adopted by the Commission in December 1984 and released in January 1985. The FCC Office of Plans and Policy also released a working paper, Bypass of the Local Exchange: A Quantitative Assessment (Working Paper #12), in September 1984. Finally, the Commission is now compiling additional quantitative materials on the issue of bypass at the request of the House Subcommittee on Telecommunications and Finance, and we will be glad to furnish the results to you when they are submitted to the House Subcommittee.

Despite numerous studies documenting the existence of substantial bypass activities by high volume telecommunications users, neither this Commission nor the General Accounting Office has been able to quantify the exact amount of bypass now occurring or that which might be expected since firms engaged in bypass activities are not required to report their activities to any agency and may, in fact, be reluctant to report the extent of their bypass activities for fear of regulatory or legislative action.

Both the Commission and the Federal/State Joint Board agree that the incentives for bypass are incontrovertible. As long as switched access is priced well above the cost of connection to the network, large volume customers will seek lower cost alternatives. As large customers leave the nation's public switched network, the costs of that network must be borne by the remaining users. While the phrase "death spiral" may be a bit melodramatic, it does reflect the fact that when large customers bypass the public switched network, the costs to remaining users of the public system increase, creating even greater incentives for bypass. We believe that the Commission's access charge program, including the use of subscriber line charges capped at $3.50 for residential and single line business customers, is sufficient to prevent this.

In fact, the decrease in rates for interstate toll service due to the implementation of subscriber line charges has resulted in a substantial increase in switched access traffic. This allows fixed costs to be spread over a greater number of minutes, increasing the efficiency of the network and producing customer benefits in excess of the increase in subscriber line charges.

Question 4. What are the most important factors in ensuring and furthering universal telephone service? What is the Commission doing to achieve this objective?

Answer. In order to promote uiversal service, the Commission adopted a number of safeguards in conjunction with the initial implementation of subscriber line charges for residential and single line business subscribers. First, in order to ease the effect on subscribers, the Commission prescribed a gradual transition for the implementation of subscriber line charges. Second, the Commission adopted a lifeline assistance program which provided for federal benefits, which match state assistance, up to the full amount of the subscriber line charge. Third, it adopted high cost assistance measures to reduce the burden on ratepayers living in high cost areas. These measures allow local exchange carriers with high loop costs to allocate an additional percentage of these costs to the interstate jurisdiction, which reduces the intrastate cost allocation and keeps local rates lower than they would be otherwise. Finally, the Commission took steps to monitor the effect of the access charge plan on universal service.

The recent nationwide telephone penetration rate for March 1987 is 92.5 percent, the highest penetration rate recorded since the Census Bureau began collecting this information for the Commission in November 1983. At that time 91.4 percent of U.S. households had telephone service. In addition, the Census Bureau data show that that between November 1983 and November 1986 the number of households without telephone service declined from 7.4 million to 6.8 million.

The Joint Board recommended and the Commission recently adopted further measures to promote universal service, in conjunction with the increase in subscriber line charges. First, the increase in subscriber line charges will be implemented gradually over a two year period. Second, the Commission adopted a new lifeline assistance program which will directly address the problem of high non-recurring charges that have been found to be a significant barrier to telephone subscribership by low income households. The new "Link Up America" program provides federal benefits sufficient to pay one-half of the installation and connection charges, up to $30, for qualifying households. Federal benefits are also available to cover the interest cost of deferred payment plans for these charges when the local exchange carrier does not charge qualifying subscribers interest. No matching state assistance is required under this program. Third, the Commission also specified that the federal matching benefits on monthly charges would increase to $.50 per month along with the subscriber line charge. Fourth, the Commission retargeted the high cost assistance measures to provide additional benefits to small and medium size local exchange carriers. Finally, the Commission adopted a more comprehensive monitoring program to track the effect of the Commission's actions regarding subscriber line charges, lifeline assistance, high cost assistance and the common line pool.

Question 5. Is the Commission still committed to its international separate satellite system policy? What steps will the Commission take to ensure that prices charged by Comsat and INTELSAT are cost-based? Does the Commission have access to sufficient information to make the determination that these rates are cost-based?

Answer. The Commission remains committed to it's policy on international satellite systems separate from INTELSAT in order to foster competition in the international marketplace. The U.S. Government has recently been instrumental in concluding a successful consultation with INTELSAT concerning five transponders on a satellite provided by PanAmSat. We are optimistic concerning the successful outcome of any future consultations concerning additional transponders on this satellite, as well as satellites provided by other applicants meeting restrictions designed to fully comply with U.S. treaty obligations.

On the question of pricing, we have publicly expressed the position, directly to the INTELSAT Assembly of Parties and directly to the INTELSAT Board of Governors through instructions to our Signatory, Comsat, that INTELSAT prices should be based on costs and that these costs should be well documented. We are criticized INTELSAT's prices for the sale of transponders used to provide domestic services as well as the lease of certain transponders for international services.

In a December 13, 1985 press release, we also stated our concern that INTELSAT's prices for planned domestic services do not reflect a full allocation of certain overhead costs or even a partial allocation of costs related to unused capacity. We performed our own study of INTELSAT's costs which was used as a basis of a joint State Department, NTIA, and Commission contribution to the Board of Governors in March 1986. In that presentation, we concluded that INTELSAT's planned domestic service prices were not cost justified since a number of the prices were too low to recover all of the relevant costs of providing the services. Although INTELSAT has made some changes to its planned domestic prices partially reflecting our views, certain prices remain below cost.

On international prices, we are aware that INTELSAT is using a two-tier pricing policy for the Caribbean basin (the Caribnet tariff) by offering a 50 percent discount to Signatories, such as Comsat, for international digital satellite services within the region. This action strongly suggests that INTELSAT may have attempted to place obstacles in the path of separate systems as well as transborder systems. Consequently, the U.S. Government has consistently instructed Comsat to oppose the Caribnet and similar discounts unless and until INTELSAT fully cost justifies these rates. Further, we have recently decided to suspend and investigate a proposed Comsat tariff based on this INTELSAT pricing structure.

We have the legal right to cost information in both the INTELSAT and Comsat forums and we intend to fully exercise this right. In so doing, we will continue to ask both organizations for whatever studies are necessary to ensure an adequate cataloguing and allocation of costs to individual service offerings.

GTE CORP.,
Washington, DC, May 1, 1987.

Hon. MIMI WEYFORTH DAWSON,
Commissioner, Federal Communications Commission, Washington, DC.

DEAR COMMISSIONER DAWSON: The following responds to your request for further information regarding GTE's position on the $3.50 subscriber line charge, as charge, as described in my letter to you on April 8, 1987.

GTE believes that the $4 subscriber line charge (SLC) proposal contained in the original Unity 1A agreement is the most appropriate given the increasingly competitive market conditions in which GTE exchange carriers operate. The FCC's decision to adopt the lower $3.50 SLC on a schedule even more delayed than that proposed by the Joint Board is a disappointment. We recognize, however, that the Federal-State Joint Board and the FCC must decide these issues based on broader considerations. GTE is willing to support these changes. However, GTE is not prepared to rule out remaining in the National Exchange Carrier Association (NECA) carrier common line (CCL) pool if subscriber line charges fall below $3.50.

As you know, the CCL pool was established in recognition that costs of providing subscriber access to the public switched telephone network vary widely among the telephone companies throughout the country. Pooling is a benefit to the extent that, by "averaging", it reduces rates for customers in high-cost areas. On the other hand, to the extent that customers in lower-cost areas pay an average rate higher than they would otherwise be charged, pooling encourages "bypass" of the local telephone network. The inducement to bypass is particularly strong for those high-usage business customers who can afford, for example, to connect their premises directly to interstate lines of communication.

GTE is the largest, but far from the only, recipient of support from the NECA CCL pool. Indeed, in 1987, recipients are expected to draw in excess of $1 billion of support from the CCl pool. These recipients include such large companies as Bell South, Southwestern Bell, U.S. West, United Telephone and Continental Telecom and well over 90% of the remaining smaller exchange carriers.

Under existing rules at a $2 SLC, GTE would draw approximately $225 million from the pool in 1987. Absent this pool support, to recover its costs GTE would need to charge interexchange carriers (IXCs) a weighted rate of 4.9 cents per minute versus a pooled rate of 3.3 cents, almost 50% higher. Inasmuch as the 4.9 cent rate is a composite GTE rate, it masks even greater discrepancies in individual study areas.

For example, GTE's West Coast Telephone Company of California would have to charge IXCs in excess of 10 cents pre minute absent pool support. Further, General Telephone Company of the Southwest (GTESW) would have to charge IXCs 6.8 cents per minute to recover its costs in Texas, or a rate more than 100% above what it now charges IXCs in Texas as a member of the CCL pool. While GTSW operates in many rural Texas communities, it also provides telecommunications service in and around Dallas and Houston, major metropolitan areas. Charging IXCs almost 7 cents per minute within these areas would vastly increase GTSW's exposure to bypass and would create pressures for IXCs to deaverage their rates to and from GTE's Texas operating territiories.

A $3.50 SLC would substantially reduce the rates GTE would need to charge IXCs if it left the pool. Assuming for convenience of illustration a 1987 implementation (instead of the 18-month, two-step phase-in), a $3.50 subscriber line charge would reduce the CCL revenue requirements 29% and 21%, or to 3.5 cents and 5.4 cents per minute, in GTE (aggregate) and in GTSW-Texas, respectively. To the extent that GTE continued the CCL pool's current practice of charging 4.3 cents for terminating access minutes, a $3.50 SLC would permit 55% and 32% reductions in GTE aggregate and GTSW-Texas originating CCL rates, respectively. While GTE's rates would still be higher than those charged by a nationally averaged pool, their absolute level would be reduced to a point at which GTE could rationally choose to leave the pool.

Estimates for aggregate GTE in 1993 are also illustrative. Absent a $3.50 SLC, GTE would, in 1993, be required to charge IXCs 3.9 cents per minute if it decided to give up $315 million of pool support. Despite projections for substantial growth in switched access minutes, this 3.9 cent rate would be higher than the 1987 3.3 cent pooled rate. While end users and IXCS would contribute 33% and 67%, respectively, of GTE's $1,040 million interstate non-traffic sensitive (NTS) revenue requirement in 1987 under a $2 SLC, end users would contribute less than 30% of the $1,394 interstate NTS revenue requirement in 1993. GTE would have to rely on IXCs to fund over 70%.

At a $3.50 SLC, GTE's 1993 CCL would be reduced to 3.1 cents. While above the pool's average 2.0 cents, GTE's rate would fall below what it charges in 1987 as a member of the pool. GTE would thus be able to show some downward movement from today's prices that would not otherwise be possible. Further, in 1993, a $3.50 SLC would reduce IXC contributions to 57% and raise end user contributions to 43% of GTE's CCL revenue requirement. While end users would still, in GTE's view, pay less than their fair share, the reduced dependence on IXCs would permit GTE to forgo the financial benefits available form the CCL pool.

Leaving the CCL pool holds two important attractions for GTE. First, by permitting its prices to reflect its own costs, GTE's competitive position would directly benefit from increased operating efficiencies. While many of GTE's operating costs differ from the industry average by virtue of its operating territory characteristics. GTE is taking steps to narrow the gap between its cost levels and the industry average.

Second, by leaving the pool, GTE will be permitted greater flexibility in the manner by which it recovers CCL costs from IXCs. This flexibility will be important in limiting the competitive disadvantages that GTE might otherwise realize form having CCL costs slightly higher than the industry average. In other words, GTE is prepared to accept a trade-off. By leaving the pool, it gives up the ability to charge the lower pool rate in many of its operating territories. On the other hand, departure from the pool enables GTE to take advantage of operating efficiencies and permits pricing flexibility, both of which can be used to blunt the effects of the non-pooled rate increases.

In summary, the $3.50 SLC is vitally important; without it GTE cannot rationally contemplate leaving the CCL pool. The adverse incentives, created by the high CCL rates GTE would have to charge IXCs, could not be mitigated by flexible pricing schemes and cost containment efforts. Under optimistic circumstances including a $3.50 SLC, by leaving the pool completely in 1993 GTE would have to collect $170 million more from interexchange carriers inits operating territories than it would otherwise charge as a member of the pool. Lower subscriber line charges would require GTE to collect even more from IXCs. The competitive and bypass pressures triggered by such increased cost recovery requirements would outweight the advantages of leaving the pool in the first place. Absent a $3.50 SLC, GTE would have to revisit its current intentions.

Sincerely,

SAMUEL F. SHAWHAN,
Vice President, Government Affairs.

Question. In the must carry decision, the Commission adopted a five year sunset date. The rationale for this policy was that it would increase the chances of the new rule withstanding constitutional scrutiny. Why wouldn't the chances of the rule passing constitutional muster be similar if the Commission had been stated that it would revisit this rule in four or five years?

Answer. In its must carry decision, the Commission determined that the most appropriate course of action was to adopt a plan that will make cable subscribers aware of the need for the capability to access broadcast signals directly off-the-air. In this respect, the Commission also found that the former must carry rules contributed to a distorted market environment that needs to be corrected before market forces can be relied upon to achieve maximum diversity in program choices to the public. The interim must carry rules were adopted to ensure that cable subscribers will continue to maintain access to broadcast services, so that such services will remain a competitive alternative source of programming even as consumers move to an environment without must carry rules. The Commission indicated that these rules were necessary only to provide a transition to that time when consumers will have had an opportunity to become aware of the need for direct access to off-the-air signals and to acquire such capability if they so desire.

In considering the must carry matter, the Commission recognized, as the Supreme Court had in *Quincy Cable,* that must carry rules are a stringent form of regulation that intrude on cable operators' free speech rights. If also stated that the input selector switch and consumer education features of its regulatory plan would resolve the viewer access/misperception problem within the five-year transition period. The Commission found that must carry rules are neighter desirable nor sustainable as long term solutions to the problem of cable subscribers' access to broadcast signals and, in fact, would impede its objective of maximizing program choices. Thus, the Commission found no need to provide for revisiting its decision to sunset the new must carry rules at the end of the transition period.

In addition, to simply announce that these are permanent rules subject to revisitation would not distinguish these from other rules that are subject to review and would not emphasize to the Court the degree of effort invested by the Commission in attempting to comply with the law as set forth in the *Quincy* case. The Commission will, however, reexamine the marketplace prior to the end of the transition period to determine whether there may be limited areas in which the purpose of the transition rules has not yet been fulfilled.

Question 7. When will the Commission issue the written order on its must carry decision?

Answer. The decision, released May 1, 1987, is attached hereto.

Question 8. Is the Commission concerned about cable operators shifting the channels occupied by television stations?

Answer. In the Report and Order in the must carry proceeding, the Commission did not restrict cable operators' discretion with respect to the channel positions on which they retransmit must carry signals. It stated that a cable operator may carry "qualified" broadcast stations on any channel position, so long as those carried in fulfillment of must carry obligations are carried on the lowest-priced separately available tier of service offered to each subscriber. However, in the Memorandum Opinion and Order on must carry reconsideration, the Commission indicates that it recognizes that a cable operator might charge must carry stations for channel position as a means to circumvent the prohibition on payments by such stations for carriage. The rules have been revised to prohibit these and other types of "indirect" payment arrangements by stations carried in fulfillment of must carry obligations.

Question 9. What is the status of the Commission's inquiry into the awarding of preferences for minorities and women and the policy of distress sales of broadcast properties?

Answer. On December 17, 1986, the Commission adopted a Notice of Inquiry reexamining the Commission's comparative licensing, distress sales and tax certificate policies premised on racial, ethnic or gender classifications. Comments are due to be filed in this proceeding by May 7, 1987 and reply comments are due on or before July 6, 1987.

Question 10. In the recent case of *Johnson* v. *Transportation Agency,* the Supreme Court upheld the right of an employer to take gender into account in promoting an employee in order to increase the representation of women in the work force. Is the Commission re-evaluating the need for its inquiry into the constitutionality of its preference policy in light of this decision?

Answer. In addressing the question whether the preference, distress sale, and tax certificate policies as presently constituted and administered are constitutional, the Notice of Inquiry states that commenters should submit analyses of relevant case law in support of this reasoning. It will therefore be appropriate for the Commission to consider any comments discussing the impact of *Johnson* v. *Transportation Agency,* and take into consideration whatever impact that case may have in making its final decision.

Question 11. In connection with the FCC's inquiry into the minority and female preferences, the Commission requested that the U.S. Court of Appeals remand the Shurberg case, which involved the distress sale policy. The court recently rejected your remand request and gave you until April 23rd to decide the case. Since the inquiry is still pending, what will you tell the court on the 23rd? Is the Commission going to support its earlier decision permitting the distress sale of WHCT–TV to the minority controlled company, Astroline Communications?

Answer. The attached pleading and public notice filed with the District of Columbia Court of Appeals on April 23, 1987 explain the present status and Commission position with respect to this matter.

Question 12. If the Commission decides to alter its position on the syndicated exclusivity rule, would it follow the elaborate procedures the Commission followed in abolishing this rule, such as conducting extensive studies?

Answer. The Commission is re-examining several of its signal carriage rules (or absence of rules) in conjunction with its recent actions on must carry. The mass media industry has changed considerably in recent years, and the Commission is concerned that the regulatory framework we provide be realistically configured to current circumstances. An ongoing concern is that all the players in the video marketplace participate on an equal footing.

While the focus of this proceeding is thus different than that in the proceeding which abolished the syndicated exclusivity rules, the Commission has requested and expects to receive extensive, wide-ranging comments and information with respect to the issues presented. Any decision made thereafter will, of course, be based on the record evidence developed during the proceeding.

Question 13. What is the status of the Commission's inquiry into the need for the adoption of one technical standard for AM Stereo?

Answer. The issue of the selection of a single AM stereo system was first brought before the Commission in 1980. On April 9 of that year, the Commission decided to implement rules which would provide for the adoption of a single national AM stereophonic broadcast system. Immediately following that decision, the Commission received many comments from broadcast licensees objecting to its selection of the Magnavox system. Upon consideration of these and other comments, the Commission determined that a reliance on market forces would be the most prudent course to follow and declined to adopt a single system standard.

In June, 1984, the National Black Media Coalition (NBMC) petitioned the Commission to reconsider its decision to rely on market place forces and to select one system as the national standard by way of a lottery. This petition was dismissed by the Commission on the grounds that the AM stereo matter had been fully considered in the Report and Order. Since that time, the Commission has not taken any action to reconsider its decision to rely on market forces as adopted therein.

NTIA is studying the deployment of AM Stereo, however. In February 1987 NTIA released a report which concluded that although one stereo system was dominant, its share of the total AM market was insufficient to be declared a de facto standard. NTIA further concluded that the development of a multi-standard integrated circuit could be a determining factor in the future rate of AM stereo deployment, and that it intended to study this aspect further.

QUESTIONS OF SENATOR DANFORTH

FAIRNESS DOCTRINE

Question 1. The FCC has made it quite clear that it disagrees with the policy of the fairness doctrine. I have cosponsored a bill to codify the doctrine and I believe that doctrine will sooon become a part of the Communications Act.

How will you enforce the fairness doctrine?

Answer. Assuming the passage of the pending legislation, I am confident that the Commission could and would continue to enforce the doctrine in a fair and equitable manner in accordance with the legislative directive. This enforcement would necessarily take into account the proposed statutory requirement that such enforcement and application "shall be consistent with the rules and policies of the Commission in effect on January 1, 1987."

It is my understanding that it would be the intent of Congress, however, that this legislation "is intended to permit any needed administrative reform and adjustment to meet new situations." Congressional Record, April 2, 1987, E 1260 (Cong. Dingell). It is not my present understanding that S. 742 would moot the congressionally mandated proceeding the Commission now has in progress "to consider alternative means of administration and enforcement" of the doctrine. Further, I would expect the policy to be administered with as little intrusion into the editorial processes of licensees as is possible. This is, I believe, consistent with the intention that "regulation should be narrowly tailored so as to impose the minimal burden on the licensee." Congressional Record, April 21, 1987, S. 5220 (Sen. Hollings).

Question 2. I understand that the FCC is currently deciding how to allocate certain spectrum and whether to give it to land mobile or to give the broadcasters an improved television system, high definition television (HDTV).

Spectrum allocation decisions are very difficult and often very technical. I would like your assurances that you will consider all the evidence before making this allocation. Will you carefully consider the relative need for the spectrum of the competing groups?

Answer. In General Docket No. 85-172 the Commission has proposed to allow further sharing of the UHF TV band by land mobile services in the top 8 metropolitan areas. If adopted, the proposal would open an average of 21 MHz of additional spectrum for land mobile use in these areas on the basis of a carefully engineered plan designed to prevent interference to current broadcast operations. This proposal has been strongly opposed by the broadcast industry which has argued that it would interfere with television reception and reduce the potential for enhanced broadcast television services such as HDTV.

On February 13, 1987, representatives of the broadcast industry petitioned the Commission to open a broad inquiry into the regulatory issues and spectrum requirements of HDTV and, pending the outcome of that proceeding, to postpone final decision on the further sharing proposal. These petitions were placed on public notice on March 27, 1987, together with some recent studies by the Commission's staff relevant to the further sharing proposal. Public comments and replies on these recent releases are due May 12 and June 1, 1987, and will be considered fully and with great care before any final decisions are made.

The Commission is acutely aware of the extent of competing demands for limited spectrum. This continues to be one of our most difficult, and important, decision-making areas. We are particularly cognizant of the importance of balancing the special needs of mobile communications against the need to allow new technologies to flourish when they are desired by users. In addition, we do not want to artificially handicap any group relative to its competition. All of these factors will be taken into account as the Commission reaches its decision.

Question 3. I understand the FCC is beginning a rulemaking on syndicated exclusivity. Would you explain why you have decided to re-open this issue and how this fits into your pro-deregulation philosophy?

Answer. The Commission is re-examining several of its signal carriage rules (or absence of rules) in conjunction with its recent actions on must carry. The media industry has changed considerably in recent years, and the Commission is concerned that the regulatory framework we provide be realistically configured to current circumstances. An ongoing concern is that all the players in the video marketplace participate on an equal footing. No segment of the industry should have an *artificial* advantage over any other.

In our economic system, the footing referred to consists in large part of the property and contractual rules that government provides so that free markets can function efficiently and equitably. Under the compulsory license, system, and in the absence of syndicated exclusivity rules, broadcasters' freedom to contract with program suppliers appears to have been limited in a way that the freedom of cable operators and other distributors of video product has not been. If so, reinstitution of syndicated exclusivity may, by at least partially restoring contractual rights, improve the free functioning of the video marketplace.

My consistent philosophy has always been, and is today, to try to rely on market forces, where feasible, to decide what will be reproduced and how it will reach the consumer. Frequently, that goal is served by removing rather than instituting rules. But I have never been a supporter of deregulation for its own sake. When instituting a rule serves the goal of increased consumer welfare, especially when it does so by fostering better functioning markets, I will support such action as fully consistent with a marketplace approach. We have instituted a rulemaking on this and related issues, and will be carefully examining the comments of interested parties to help us determine whether this is one of those cases where instituting a rule actually fosters our broader and primary goal of promoting the public interest.

SUBSCRIBER LINE CHARGES

Question. 4. The FCC promised Congress that it would not increase subscriber line charges above $2 unless it first presented Congress with a study justifying the increase. I understand that on Thursday, the FCC voted to increase subscriber line charges above $2. What is the status of the study promised to Congress?

Answer. In the Joint Board recommendation for implementation of the current $2.00 subscriber line charge for residential and single-line business subscribers, the Board also recommended that subscriber line charges for these customers be limited to the $2.00 level pending completion of a further Joint Board proceeding to examine the effect of subscriber line charges on universal service, economic efficiency, service pricing discrimination and bypass. The Joint Board specifically stated: "This proceeding should be instituted in late 1986 and completed as soon as possible, consistent with the need for development of an adequate record. The purpose of the proceeding would be to recommend what, if any, further steps should be taken by the FCC."

With a few minor changes and clarifications, the Commission adopted all of these Joint Board recommendations in December 1984. The recently completed proceedings before the Joint Board in CC Docket Nos. 78-72 and 80-286, and the resulting Joint Board and Commission decisions constitute the further study promised by the Joint Board and the Commission. The chronology of this proceeding is set out below.

On July 2, 1986, the Commission issued a Further Notice of Proposed Rulemaking (Further Notice) asking the Joint Board to examine the effects of (1) subscriber line charges, (2) the federal lifeline assistance program, and (3) the present measures to assist high cost telephone companies, on the primary goals of the access charge proceeding. The Further Notice stated that the lifeline program and high cost assistance measures were integral parts of a cohesive package, and therefore must also be examined as part of the review of subscriber line charges. In seeking public comment for our consideration of these issues, the Further Notice also requested discussion on whether the three-part plan for implementation of limited subscriber line charges, lifeline assistance, and modification of the high cost assistance initially recommended by the Joint Board and adopted by this Commission had furthered the primary goals of this proceeding, and what further steps should be taken to achieve these goals. In addition, the Further Notice sought the Joint Board's recommendations on possible modifications to the current provisions for mandatory nationwide pooling of common line costs and revenues.

In response to the request for comment, more than sixty interested parties filed comments and replies in this proceeding. The comments included studies and surveys on telephone penetration rates, subscribers' reasons for disconnecting, or being disconnected from, the telephone network, bypass, and information on the reduction in switched access and interstate toll rates and on increases in interstate toll calling.

On March 12, 1987, the Joint Board completed its comprehensive reexamination of issues related to non-traffic-sensitive cost recovery and adopted recommendations concerning: (1) subscriber line charges, (2) lifeline assistance to low income households, (3) a revised common line pooling mechanism and (4) measures to assist subscribers served by high cost local telephone companies. Based on the substantial record developed in this proceeding, the Joint Board found that the implementation of subscriber line charges has had no adverse effect on universal service and has increased the efficient use of the public switched network. In addition, the Joint Board concluded that the implementation of subscriber line charges has substantially reduced the extent of pricing discrimination between switched and special access service by moving switched access prices closer to the true economic cost of providing that service. This reduction in the loading of loop costs onto switched access service rates, the Joint Board concluded, will help reduce the threat of uneconomic bypass.

Based on these findings, the Joint Board recommended a permanent resolution of issues concerning the proper method for interstate NTS cost recovery. Specifically, the Joint Board recommended an increase in the residential and single line business subscriber line charges to a maximum of $3.50 in increments of $.60, $.60, and $.30 over the next two years. The Joint Board also recommended that the Commission expand the federal lifeline assistance program, retarget the high cost assistance, and establish a more comprehensive monitoring program. The Joint Board's conclusions and recommendations regarding these issues were released to the publc on March 31, 1987.

On April 16, 1987, the Commission adopted the Joint Board's recommendations concerning subscriber line charges, federal lifeline assistance, high cost assistance, and pooling of common line costs, with certain minor modifications, as well as the Joint Board's analysis and reasoning in support of its recommendations. The Commission Report and Order will be released in the near future.

AT&T RATE REGULATION

Last month, the FCC proposed to lessen ("streamline") its review of some of AT&T's rates. Rates for services that are "competitive" and those taken under contract would need less economic justification and would become effective on shorter notice than usual.

Question. How will the FCC ensure that AT&T does not underprice competitive and contract services and make up the difference ("cross subsidize") with less competitive services?

Answer. In January, the Commission proposed to "streamline" the tariff regulation of certain basis services offered by dominant carriers, such as AT&T, the BOCs, and the independent telephone companies, that we find to be offered in competitive markets. This proposal is limited to service offerings that are subject to competition, and focuses on competitive packet switched services and competitive contract services.

Whenever a carrier offers services which are subject to differing levels of competition, there is a possibility of cross-subsidization. In its proposal for reducing regulation of competitive basic services, the Commission tentatively concluded that cost allocation procedures similar to those developed in CC Docket No. 86-111 for allocating costs between regulated services and deregulated services would be necessary to prevent possible problems, and we asked for comment on this issue.

Question. Why should services taken under contract be streamlined? Is there any limit to the services that AT&T could offer under contract to take advantage of the reduced regulatory scrutiny?

Answer. Our proposal to streamline the regulation of competitive contract services is based on the argument that where competition exists and consumers have a number of contract service offerings from which to choose, there is a reduced need for Commission oversight. Only contract services that the Commission finds to be offered on a competitive basis, and thus subject to the price and quality discipline of the market, would be subject to streamlined tariff regulation. Thus, AT&T cannot evade regulatory scrutiny by attemping to offer noncompetitive services on a contract basis since streamlined tariffing would not apply.

QUESTIONS OF SENATOR MCCAIN

Question. 1. Prior to the passage of the Cable Communications Act of 1984, the FCC had rules governing how local governments were to go about issuing cable television franchises. I believe these rules were issued in 1972 and revised several times. Is it accurate to say that those rules basically left it up to the local franchising authority to decice whether to issue one, or more tnan one, franchise for any given town or city?

Answer. The FCC did not adopt any rules respecting the number of franchises which a franchising authority could issue, viewing this as a purely local matter pursuant to the Commission's dual regulatory policy. This matter was left entirely to the discretion of the franchising authorities, subject to state law considerations.

Question. 2. In my state, most local franchising authorities during the 1970's and early 1980s chose to issue only one cable franchise, although they called them "non-exclusive."

a. Would you say that this was the national pattern?

Answer. Yes, the national pattern was for a single franchise to be awarded, although in most cases state law prohibited the award of exclusive franchises. There were instances, however, wherein two franchises were awarded for limited "overbuild" or where two cable companies competed in areas where no franchise authority existed.

b. Would you say that cities that granted one non-exclusive franchise were within the FCC rules for following FCC rules in doing that?

Answer. As noted above, there were no FCC rules to be followed in this matter.

Question. 3. What happened to the FCC rules on franchising when the Cable Communications Policy Act was enacted in 1984?

Answer. No rules on franchising, save for the fee cap, were in effect in 1984. The FCC had rescinded its rules (76.31) in 1977, converting them to mere guidelines, in the Report and Order in Docket No. 21002, 66 FCC 2d 380 (1977), recon. denied in pertinent part, 71 FCC 569 (1979). The Cable Act superseded the Commission's franchise fee rule and policies in 1984.

Question. 4. Does the CCPA have provisions similar to the Old FCC rules in regard to the number of franchises a city may grant?

Answer. The FCC had no rules concerning the number of franchises which a franchising authority could award.

Question 5. In a number of cities, suits have been filed challenging the refusal of a city to grant a second franchise. These suits are on First Amendment grounds and claim damages for violation of constitutional rights of the would-be second operator. I don't think it is fair that a city that has followed, in good faith, the FCC rules and/or the Cable Act that essentially continued those rules as far as granting one or more franchises is concerned, should face the tremendous monetary damages that could result from one of these cases. What can FCC do about this?

Answer. Because the FCC has (and had) no rules respecting the number of franchises a locality could award, leaving the entirety of the franchising process to the cities and states, there is little the FCC can do in this situation, particularly in view of Congress' confirmation in the Cable Act that franchising is basically a local matter. When the Cable Act is subjected to a constitutional challenge, the Commission is informed of this, as is the Department of Justice. This is required by Federal rules of judicial procedure. The Department has consulted with this agency on what position should be taken in such cases.

Question 6. Legislation may soon be introduced to limit the exposure of cities and towns to monetary damages for issuing a limited number of cable television franchises. The threat of large damage awards in several pending cases appears to warrant Congressional attention for two reasons—it is inappropriate to punish cities for issuing franchises in accord with FCC rules and the Cable Act, and there are important First Amendment questions that should be resolved by the courts in these cases, but the looming threat of damages may prevent that resolution because of the enormous pressure on cities to settle before judgement. I believe the FCC should share these concerns and objectives. What is your view?

Answer. Franchising is and has always been a purely local matter, between the applicants and the local and/or state government. The Commission has had no rules in this area and cannot have them today. Since our role in this matter is so limited and no specific solution to this problem is before us, we are not in a position to provide any detailed response. It would certainly appear appropriate for any judicial decision in such a case to reflect the absence of wrongful intent and the unsettled state of the law, if the plaintiff is successful on the merits. However, in light of the precedent created, any exemption from liability for a First Amendment violation would require very careful study.

Question 7. Are local governments the only entity exposed to these damage claims?

Answer. No, state or regional authorities, to the extent they are involved in the franchising process, could also be subject to claims for damages arising from First Amendment violations. In addition, rival cable operators might be liable for damages on anti-trust grounds. Local municipalities were exempted from such monetary liability in separate legislation at the time of the Cable Act.

QUESTIONS OF SENATOR CHILES

Question I. a. Does it remain the Commission's policy, announced in its 1984 multiple ownership order, and reaffirmed to Congress at that time by Chairman Fowler, to require a network to affirmatively demonstrate "compelling circumstances" before approving the purchase of other than a network's own affiliate?

b. Isn't it inherently anti-competitive for a network to have two outlets in one market?

c. Isn't it inherently anti-competitive for a network to buy up a competing network affiliate while it has an ongoing affiliation agreement with another station?

d. Suppose network's *only* motivation for station purchase is financial—assume *actual* service decline—i.e. giving up stronger affiliate for weaker O&O. Will you *require* a public interest showing before you permit such an ownership transfer?

Question II. a. Don't you agree that the power of the three networks to award affiliation contracts to local television stations gives them a substantial economic weapon that the networks can inherently leverage when trying to buy stations?

b. If networks are permitted to buy other than their own affiliates, doesn't that open up the floodgates to network predation in every market with 4 VHF signals?

c. If you find an instance of network muscling in connection with the purchase of a broadcast station—what will be your response?

Question III. Shouldn't Commission policy be to protect the survival of locally-owned and managed stations that provide diversity of voices when they are threatened by network predation?

Answer. On February 6, 1987, a transfer of control application was filed for station WTVX, Miami, Florida, a CBS affiliate. The licensee of that station is now WBC Associates, L.P. The proposed transferee is General Electric Property Management Company of Florida, a subsidiary of General Electric. The application has been placed on public notice and a petition to deny has been filed by Sunbeam Television Corporation, an NBC affiliate that serves the Miami area. The issues that are raised by the above questions are now pending in this contested proceeding. As such, it would be inappropriate and premature for the Commission to respond with a specific position at this time. Further, such communications may be considered to be a violation of the Commission's ex parte rules, since they would address the issues in a restricted proceeding.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

JUN 19 1987

OFFICE OF
THE CHAIRMAN

Honorable Daniel K. Inouye
Chairman, Subcommittee on Communications
Committee on Commerce, Science & Transportation
SH-227 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Chairman Inouye:

I would like to clarify and amend my response to a question on broadcast transfers made before the Subcommittee on April 21, 1987. Specifically, as part of a response to a question by Senator Kerry on my view of the three year holding rule for broadcast stations, I said, "Since 1982 when we abolished the rule, 75 percent of the stations, and I include in that number both radio and television, have been held longer than three years." At the time of my response, Commission data seemed to support the "75 percent" estimate. However, in connection with our preparation for a hearing before the House Telecommunications Subcommittee on the issue of station transfers, we reviewed our data base thoroughly and found it defective. We are, therefore, no longer confident that the 75 percent figure is accurate.

Enclosed is a table relating to station transfers which represents our best current estimate of television station sales for years 1981 through 1986.

Please excuse any inconvenience but I would like the record to be as accurate as possible.

Sincerely,

Dennis R. Patrick
Chairman

Enclosures

Table 1
Television Station Sales : 1981 - 1986

	Number of Stations sold	Of Which Held Three or More Years No.	Of Which Held Three or More Years Percent	Of Which Held Fewer Than Three Years No.	Of Which Held Fewer Than Three Years Percent	Commercial Stations on Air At Start of Year	Number of Stations Sold As a Percent of Stations on Air	Sales of Stations Held Fewer Than Three Years As a Percent of Stations On Air
1986	121[a]	58	47.9	63	52.1	919	12.3	6.9
1985	98	67	68.4	31	31.6	883	11.1	3.5
1984	74	53	71.6	21	28.4	841	8.8	2.6
1983	79	75	94.9	4	5.1	813	9.7	0.4
1982[e]	32	27	84.4	5	15.6	777	4.1	0.6
1981	26	25	96.2	1	3.8	756	3.4	0.1
TOTAL	430	305	70.9	125	29.1	832[b]	8.6[c]	2.5[d]

Sources: Television Factbook, 1987 ed. Stations Volume
Television Factbook, 1986 ed. Cable and Services Volume
Broadcasting, Feb. 9, 1987
FCC data.

[a] Nine stations were sold twice in 1986; they are counted twice in the total. In five cases, the first sale of the year was after a holding period of more than three years. Six stations were sold in spinoffs from station group acquisitions.

[b] 1981 - 1986 Average

[c] Average number of stations sold per year in 1981 - 1986 (430/6 = 71.7) divided by average number of stations on air in 1981 - 1986 (832)

[d] This is (125/6)/832

[e] The Antitrafficking rule was eliminated in November 1982.

Table 2

Television Station Sales 1981 - 1986
By Years Held Prior to Sale

Years Held	1986	1985	1984	1983	1982	1981	1981-86
0 - 1	13	2	5	0	0	0	20
1 - 2	21	16	12	1	3	1	54
2 - 3	29	13	4	3	2	0	51
Three or more	58	67	53	75	27	25	305
TOTAL	121[a]	98	74	79	32	26	430

Source: See Table 1

[a] Nine stations were sold twice in 1986 and appear twice in the total. All of the second sales were within a year of the first sales. Five first sales were after holding periods of over three years; three were in the 2-3 year range, and one in the 0-1 year range.